

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13159 OF 2025

**SHRIMATI ZAHIRABI RAHIMSHA MULLA AND OTHERS
VERSUS
KAMARUDDIN MOHIDDIN MULLA AND OTHERS**

...
Mr. Shubham Dhenge a/w Mr. Parvez Sanadi Advocate for
Petitioners
Mr. Samiulla M. I. Patil, Advocate for Respondents
...

**CORAM : NITIN B. SURYAWANSHI, J.
DATE : 07TH JANUARY, 2026**

PER COURT :

1. By this petition petitioners / original defendants challenge the order dated 03/05/2025, passed by learned 3rd Joint Civil Judge Junior Division, Peth Vadgaon below Exhibit-42 in Regular Civil Suit No.36/2019, thereby allowing the application filed by respondent No.1 / plaintiff under Order VI Rule 17 of the Code of Civil Procedure.

2. Heard learned advocate for petitioners and learned advocate for the respondents. Perused the grounds raised in the writ petition memo, annexures thereto and the citation relied upon by learned advocate for petitioners.

3. The trial Court has allowed the application filed by respondent No.1 / plaintiff for amendment observing that the suit

is filed for partition and injunction against the defendants/petitioners. It is further observed that, *prima facie* it appears that as per the defence taken by the defendants in their written statement at Exhibit-32, plaintiff now wants to amend his plaint and by way of amendment plaintiff wants to amend his family tree and add the name of first wife of his deceased father. The family tree already mention the names of plaintiff and defendants, therefore, the amendment sought does not intend to introduce new fact. After the amendment defendants can file their additional written statement as per the amendment. Bar under Section 115 of the Indian Evidence Act, does not apply to the present application as the plaintiff has not either by his declaration or omission caused or permitted defendants to believe a thing to be true or to act upon such belief in the present proceeding. So, no prejudice will be caused to the defendants if the present application is allowed.

4. Learned advocate for petitioners assailed the impugned order by relying on ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, (2009) 10 SCC 84***, wherein it has laid down that "*As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application*". This is settled legal position. However, evidence is required to be led before the trial

Court to show that claim of petitioners is barred by limitation.

5. There is no illegality or perversity in the order passed by the trial Court. No case is made out by the petitioners to exercise extraordinary writ jurisdiction. Writ petition being devoid of merit is, therefore, dismissed.

(NITIN B. SURYAWANSHI, J.)