

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7528 OF 2024**

Sayyad Mohd. Abdul Quadar and Ors. ... Petitioners
versus
Shankar Balkrishna Matale and Ors. ... Respondents

Mr. Nikhil M. Pujari, for Petitioners.
Mr. R.D.Soni i/by Mr. Milind Deshmukh, for Respondents.

CORAM: N.J.JAMADAR, J.

DATE : 13 JANUARY 2026

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 2 April 2024 passed by the learned Civil Judge, Sr. Division, Nashik, whereby the application for amendment preferred by the Petitioners came to be rejected.
3. The Petitioners have instituted a suit for partition and separate possession for their shares in the suit properties. Multiple applications for amendments were filed. One of the applications for amendment in the plaint was rejected by the trial Court. The matter came up before this Court in WP No.3745 of 2016. By an order dated 30 June 2023, this Court allowed the said Petition and granted the application for amendment. Since the suit was instituted in the year 2002, the Trial Court was requested to decide the suit as expeditiously as possible and preferably within a period of one year thereof.
4. The Petitioners thereafter filed an application for amendment in the

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plaint contending, inter alia, that in the plaint, the Plaintiffs have asserted that the co-sharer Defendants have executed sale deeds in respect of the suit properties. However, the Plaintiffs had not sought any relief of declaration qua the Sale Deed dated 30 March 1967 and the subsequent sale deeds as the said sale deeds were void, and, therefore, it was not necessary for the Plaintiffs to seek declaration in regard to the said sale deed dated 30 March 1967 and the subsequent sale deeds. The Plaintiffs realized that, in order to rule out any technical defect in the suit on account of absence of a formal prayer for declaration, the plaint was required to be amended, and, therefore, the Plaintiffs sought amendment in the plaint to incorporate the prayer for declaration qua the said sale deeds.

5. By the impugned order, learned Civil Judge was persuaded to reject the application for amendment observing, inter alia, that there was no due diligence on the part of the Plaintiffs, and the Plaintiffs despite being aware of the existence of those sale deeds did not seek declaration qua the said sale deeds at an earlier point of time, and, thus, the prayer for declaration appeared to be barred by law of limitation.

6. Learned Counsel for the Petitioners submitted that the interdict contained in the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 does not operate as the suit has been instituted prior to the CPC (Amendment) Act, 2002, which came into force on 1 July 2002. Learned Trial

Judge was, thus, in error in importing the principle of due diligence.

7. In opposition to this, Mr. Soni, learned Counsel for the Respondents submitted that the Plaintiffs had not strategically prayed for declaration as is evident from the averments in the application for amendment itself. The suit was allowed to proceed to the stage of final arguments. In fact, the final arguments have been advanced and the suit is now posted for pronouncement of judgment on 19 January 2026. In these circumstances, the impugned order does not warrant any interference.

8. It is true, the proviso to Order VI Rule 17 of the Code does not come into play if the suit is instituted prior to the 2002 Amendment. Reliance placed by Mr. Pujari, learned Counsel for the Petitioners, on the judgment in the case of **Sumita Pradipkumar Dixit V/s. Smt. Pushpadevi G. Makharia and Ors.**¹ on the said count, appears to be well founded. However, it does not imply that the aspect of delay and laches is wholly inconsequential when the Plaintiff files an application for amendment in the suit instituted prior to 1 July 2002. What exacerbates the situation in the case at hand is that, on multiple occasions, the Plaintiffs have amended the suit. Yet, a declaration is now sought with regard to the sale deed executed on 30 March 1967. By no stretch of imagination, it could be urged that the Plaintiffs were unaware of the existence of the said Sale deed and the subsequent instruments. In contrast,

1 2011 Supreme (Bom) 386

it is the specific case of the Plaintiffs that the Plaintiffs were under the impression that a prayer of declaration in regard to the said sale deed was not necessary. The Plaintiffs have taken the risk as a part of the litigative strategy.

9. In any event, the suit is for partition. If ultimately, the Plaintiffs succeed in the suit, the Court would be in a position to balance the equities. As the suit is stated to be posted for pronouncement of judgment, at this stage, this Court does not consider it appropriate to intervene. The Plaintiffs would also be at liberty to agitate the issue of legality, irregularity and correctness of the impugned order in the event an appeal is preferred against the decree which may be passed in the suit, as provided under Section 105 of the CPC, 1908,

10. Subject to the aforesaid clarification, the Writ Petition stands dismissed.

(N.J.JAMADAR, J.)