

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17723 OF 2025

Mahadu Nathaji Wafare ...Petitioner
Versus
Sachin Bapur Gadde and ors. ...Respondents

Mr. Onkar Gawade, i/b Jaydeep Deo, for the Petitioner.
Mr. Vaibhav Ugle, for Respondent Nos.1 and 2.
Mr. Kayval Shah, for Respondent Nos.3 and 4.

CORAM: N. J. JAMADAR, J.
DATED: 13th JANUARY, 2026

Order:-

1. By this petition under Article 227 of the Constitution of India, the petitioner – plaintiff takes exception to an order dated 10th September, 2025 passed by the learned Civil Judge, Pune, whereby an application preferred by the petitioner to amend the plaint came to be rejected.

2. A plot bearing Survey No.42/2/5 admeasuring 699.92 sq. mtrs. situated at village Rahatni, District Pune (the suit property), was jointly purchased by the plaintiff and other co-purchasers under a registered Sale Deed dated 21st July, 2004. Though the suit property was not divided, yet, all the joint purchasers had agreed that each of the joint purchasers became

owner of the land proportionate to the consideration paid by him.

3. The plaintiff claims he became absolute owner of an area admeasuring 207 sq. mtrs. out of the suit property. The other co-purchasers have alienated areas in excess of their respective entitlement, under the said sale deed, in favour of the defendants. Hence, the plaintiff instituted the suit seeking partition of the plaintiff's share of the land admeasuring 160.37 sq. mtrs; after accounting for the share of the plaintiff's land in the DP Road, demarcation of the portion of the suit property falling to the plaintiffs share and perpetual injunction.

4. The parties led evidence and the suit came to be posted for arguments. Thereupon, on 2nd July, 2025, the petitioner filed an application seeking amendment in the plaint so as to correct the area to which the plaintiff and the co-purchasers – predecessor-in-title of the defendants were entitled to. It was asserted that there was an inadvertent error in the calculation of the respective areas falling to the share of the plaintiff and predecessor-in-title of the defendants.

5. By the impugned order, the learned Civil Judge was persuaded to reject the application primarily on two grounds. Firstly, there was complete lack of due diligence and, thus, the

bar contained in the proviso to Order VI Rule 17 came into play. Secondly, by way of the proposed amendment, the plaintiff endeavoured to steer clear of the admissions elicited in the cross-examination of the plaintiff, and rebut the evidence adduced on behalf of the defendants. The proposed amendment amounted to a change in the character of the suit.

6. Mr. Gawade, the learned Counsel for the petitioner, would submit that the learned Civil Judge took a very rigid view of the matter. All the amendments which are necessary for the determination of the real question in controversy between the parties, are required to be permitted. Since by the proposed amendment, the petitioner was merely correcting the errors in calculating the area which fell to the share of the each of the joint purchasers, the learned Civil Judge could not have rejected the application for amendment. Reliance was sought to be placed on a judgment of the Patna High Court, in the case of *Abdullah Khan vs. Meena Khatoon and others*¹.

7. I am afraid to accede to the submissions on behalf of the petitioner. The stage at which the amendment was sought, assumed critical significance. Evidently, the application for amendment came to be filed after the parties led evidence and

¹ 2024 SCC Online Pat 2653.

the suit was posted for advancing final arguments. The interdict contained in the proviso to Order VI Rule 17, thus, applied with full force and rigour.

8. This Court was anxious to decipher whether the petitioner had made an effort to demonstrate that, in spite of due diligence, the plaintiff could not have raised the matter sought to be introduced by way of amendment, before the commencement of the trial. This Court finds that the application for amendment singularly lacks the reasons and the circumstances on account of which the proposed amendment was not sought before the commencement of the trial. No reason, as such, much less a justifiable one, has been ascribed to dilute the rigour of the proviso to Order VI Rule 17 of the Code.

9. It is imperative to note that the plaintiff has already challenged the sale deeds dated 13th October, 2011 and 23rd November, 2012, under which the co-purchasers had allegedly sold area in excess of their entitlement, in favour of defendant Nos.1 and 3. By no stretch of imagination the plaintiff could be heard to urge that, he was unaware of the area sold by the co-purchasers.

10. In view of the decision of the Supreme Court in the case of *Vidyabai and others vs. Padmalatha and another*² the existence of circumstances to indicate that despite due diligence the party could not have sought the amendment before the commencement of trial is a jurisdictional fact. In the absence of the satisfaction of the jurisdictional fact, the Court cannot permit amendment in the pleading after the commencement of the trial. As noted above, the application was preferred when the suit came to be posted for arguments.

11. In the aforesaid view of the matter, the learned Civil Judge cannot be said to have committed any error in rejecting the application for amendment in the plaint at the fag end of the trial.

12. The petition, thus, does not deserve to be entertained and accordingly stands dismissed.

[N. J. JAMADAR, J.]

2 (2009) 2 Supreme Court Cases 409.