



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.375 OF 2026**

Jabir Sayeed Suse and Ors.	...	Petitioners
versus		
Juber Abdul Hamid Suse (deceased) through legal heirs Jabin Juber Suse and Ors.	...	Respondents

Mr. P.S.Dani, Sr. Advocate i/by Mr. Mandar Limaye, Mr. Vedant Bende, for
Petitioners.

CORAM: N.J.JAMADAR, J.

DATE : 20 JANUARY 2026

ORDER :

1. Heard Mr. Dani, the learned Senior Advocate for the Petitioners.
2. This Petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of an order dated 26 September 2025 passed by the learned Civil Judge, S.D., Thane on an application for amendment in the plaint (Exh.60) in RCS No.693 of 2014.
3. The Respondents – Plaintiffs have instituted a suit for declaration that the Plaintiffs are the owners of the suit properties; the Defendants be directed to handover vacant, physical and peaceful possession of the portions of the suit properties and also to restrain the Defendants by a decree of prohibitory injunction from transferring, alienating or otherwise creating third party interest in the suit properties.

4. In the said suit, after the settlement of the issues, the Plaintiffs filed an application for amendment in the plaint seeking to incorporate, inter alia, the averments that, the Defendants have executed development agreements in which there are recitals which substantiate the case of the Plaintiffs and run counter to the defence sought to be raised by the Defendants.

5. The application was resisted by the Petitioners – Defendants. By the impugned order, the learned Civil Judge was persuaded to allow the application observing that the proposed amendment was necessary for a just decision of the suit and it would not change the nature of the suit, nor any prejudice would be caused to the Defendants.

6. Mr. Dani, learned Senior Advocate for the Petitioners, submitted that, the application for amendment was filed after more than 10 years of the institution of the suit. In fact, in the impugned order, learned Civil Judge has recorded in clear terms that the case set up by the Plaintiffs that they were unaware of the development agreements executed in the year 2003 and 2006 and, therefore, the amendment could not be sought at an earlier point in time, was untrue. Yet, the learned Civil Judge allowed the application for amendment. Once it was found that, the application was not bonafide, learned Civil Judge ought to have rejected the application, submitted Mr. Dani.

7. I have perused the averments in the original plaint and the application

for amendment. The nature of the suit assumes importance. The substance of the claim of the Plaintiffs is that, Allisaheb Gulam Mohammad Aga was the original holder of the suit properties. Allisaheb had only one daughter, namely, Aminabi. The marriage of Aminabi was solemnized with Gulam Gose Suse. Out of the said wedlock, Aminabi had a son Abdul Hamid Gulam Gose Suse. The Plaintiffs are the successors in interest of Aminabi. Gulam Gose Suse, who survived Aminabi, solemnized marriage with another lady, whose name was also Aminabi. The Defendants are the successors in interest of the second wife of Gulam Gose Suse. Since Allisaheb was the original holder of the suit properties, the successors in interest of the second wife of Gulam Gose Suse cannot be either sharers, residuaries and distant kinders of Aminabi, from the daughter of Alisaheb. Thus, the suit for declaration, possession and injunction.

8. By the proposed amendment, the Plaintiffs sought to introduce two development agreements purportedly executed by the Defendants. In the first Development Agreement, it was mentioned that, late Allisaheb had no son and Aminabi, the predecessor in interest of the Defendants, was the only daughter of late Allisaheb. The Defendants were claiming through the second wife of Gulam Gose Suse, who solemnized marriage after the demise of Aminabi, the predecessor in title of the Plaintiffs.

9. The Plaintiffs further asserted that the second development agreement

dated 21 July 2006 contains diametrically opposite recitals. Therefore, it was necessary to bring those documents on record, of which the Plaintiffs were not aware.

10. In the impugned order, indeed, the learned Civil Judge has observed that the claim of the Plaintiffs that they were unaware of those two development agreements did not appear to be correct as in the written statement filed by Juber Suse, the deceased Plaintiff No.1, in RCS No.688 of 2017, there was a reference to those two agreements. However, the said fact cannot be the sole determinant to decide the application for amendment in the plaint. The case of the Plaintiffs is that the Defendants are not entitled to inherit the property of late Aminabi, who was the sole daughter of Allisaheb Aga, as the Defendants are the successors in interest of second wife of Gulam Gose Suse.

11. In this view of the matter, the recitals in the instruments executed by the Defendants showing the relationship between late Aminabi, the predecessor in title of the Plaintiffs, and late Alisaheb, appear relevant for a just decision of the case. The proposed amendment, therefore, appears to be necessary for determining all the questions in controversy between the parties. The learned Civil Judge was, therefore, justified in holding that the proposed amendment would not change the nature and character of the suit as it would still remain a suit for declaration, possession and the consequential relief of injunction

premised on the said claim of the Plaintiffs.

12. So far as the observations of the learned Civil Judge that the explanation sought to be offered by the plaintiffs did not appear to be correct, it would be necessary to note that the Plaintiffs have asserted that, the Plaintiffs learnt about the facts sought to be introduced by way of amendment upon the perusal of the record after the demise of Juber Suse, the Plaintiff No.1, who looked after the litigation.

13. Without delving into the correctness of the explanation sought to be offered on behalf of the Plaintiffs, it would suffice to note that, if the amendment is necessary for the determination of the real question in controversy and the amendment would not cause irretrievable prejudice to the adversary, some lapse or inadvertence on the part of the person seeking amendment cannot be a ground to reject the application for amendment.

14. A useful reference in this context can be made to a decision of the Supreme Court in the case of Ganesh Trading Co. V/s. Moji Ram¹, wherein the following observations were made :

“4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its

1 (1978) 2 SCC 91

Counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued." (emphasis supplied)

15. In the case of Jai Jai Ram Manohar Lal V/s. National Building Material Supply, Gurgaon² the Supreme Court enunciated the principles which govern the exercise of jurisdiction to permit the amendment in the plaint, as under :

"5..... Rules of procedure are, intended to be a handmaid to the administration of justice. A party cannot be refused relief merely- because of same mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court -always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the - first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side." (emphasis supplied)

16. In the case at hand, this Court finds that the proposed amendment is necessary for determining the real question in controversy between the parties and it does not cause substantial prejudice to the Defendants.

² (1969) 1 SCC 869

17. Resultantly, the Writ Petition stands dismissed.

(N.J.JAMADAR, J.)