



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2692 OF 2024

1. Gunwant Maroti Padalwar, Aged 37 years, Occ:Farmer, R/o Chamorshi, Tah.Chamorshi, District Gadchiroli.
2. Ranjana Dilip Puppallwar, Aged 40 years, Occ: Housewife, R/o near Vitthal Rakhumai Temple, Sawali, Tah.Sawali, District Gadchiroli.
3. Dipa Vishal Yennamwar, Aged 34 years, Occ: Housewife, R/o Shivaji Chowk, Ashti, Tahsil Chamorshi, District Chandrapur.

PETITIONERS

VERSUS

Moreshwar Kashinath Chalkalwar, Aged 62 years,
Occ: Labour, R/o Chaodeshwar Temple, Chamorshi,
Tahsil Chamorshi, District Gadchiroli.

RESPONDENT

Shri V.M. Vishwarupe, counsel for the petitioners.
Shri M.A. Deo, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : APRIL 22, 2026

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

2. By this petition, the petitioner has challenged the order dated 19.07.2023 passed by the trial Court rejecting the application for amendment of the plaint.

3. The petitioners are the original plaintiffs who have filed a suit for permanent injunction. The defendant appeared in the suit and filed his written statement. Before any evidence is commenced, the plaintiffs filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, 'the Code') seeking amendment of the plaint to incorporate the contentions about subsequent events alleging disturbance

to their possession by the defendant. The plaintiffs also proposed to add certain prayer clauses in the plaint about declaration and possession of the suit property. The application was opposed by the defendant, however by order dated 19.07.2023 the trial Court has rejected it and this order is subjected to challenge by the plaintiffs by way of instant petition.

4. While assailing the impugned order, the learned counsel for the petitioners submitted that the application for amendment deserved to be allowed since the plaintiffs wanted to incorporate the subsequent events, which occurred during pendency of the suit, to demonstrate that the defendant has forcibly taken possession of 3000 square feet of land out of the suit property. He also submitted that the subsequent events sought to be incorporated by the proposed amendment are necessary for deciding the entire controversy involved in the suit. Further, since the amendment application is filed before commencement of the trial, the trial Court ought to have allowed the application. By relying on the settled position of law that pre-trial amendments should be liberally allowed, he submitted that the trial Court has passed the impugned order by ignoring the settled position of law.

The learned counsel for the petitioners has placed reliance on several judgments of the Hon'ble Supreme Court including the judgment in *Sampath Kumar Versus Ayyakannu & Another* [(2002) 7 SCC 559] and submitted that for avoiding multiplicity of proceedings, the plaintiff is entitled to raise all the issues in the same suit, by way of amendment.

5. The learned counsel for the respondent has opposed the petition and submitted that the proposed amendment will change the nature of the suit and will cause prejudice to the defendant's rights. While justifying the impugned order, he submitted that the plaintiffs were aware about the possession of the defendant over 3000 square feet and the said facts ought to have been pleaded in the original plaint. He therefore submitted that the amendment application is rightly rejected. In support of his submissions, he relied on the judgment of the Hon'ble Supreme Court in ***Rajkumar Gurawara (Dead) Through LRs. Versus S.K. Sarwagi and Company Private Limited & Another*** [(2008) 14 SCC 364] and submitted that the amendment changing nature of the suit cannot be permitted.

6. While considering the controversy, it has to be noted that the application for amendment is submitted before commencement of the trial. By the proposed amendment, the plaintiffs want to incorporate pleadings about subsequent events regarding disturbance to their possession which are relevant for deciding the actual controversy between the parties. Although the plaintiffs proposed to add new prayer clauses, it is relevant to note that the proposed amendment is necessary to avoid multiplicity of proceedings and necessary for decision of the entire controversy between the parties. The position of law is settled that pre-trial amendments are to be liberally allowed and reliance can be placed on the judgment of the Hon'ble Supreme Court in ***Life Insurance Corporation of India Versus Sanjeev Builders Private Limited & Another*** [(2022) 16 SCC 1].

7. Having regard to the factual and legal aspects and the settled position of law, I am of the considered opinion that the application for amendment was required to be allowed. A perusal of the impugned order shows that the trial Court has rejected the amendment application only by observing that the amendment will change the nature of the suit, however since the proposed amendment is necessary for deciding the actual controversy, the same ought to have been allowed. The reliance placed by the counsel for the petitioner on the judgment in ***Sampath Kumar*** (supra) is appropriate. Therefore, in view of the overall facts, the impugned order is rendered unsustainable in law. Hence, the following order is passed:-

- I. The writ petition is allowed.
 - II. The order dated 19.07.2023 passed by the trial Court on the application for amendment at Exhibit 19 in Regular Civil Suit No.23 of 2021 is quashed and set aside.
 - III. The application for amendment at Exhibit 19 in Regular Civil Suit No.23 of 2021 is allowed.
8. Rule is made absolute in aforesaid terms with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)