



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 6950 OF 2024

SHALIGRAM VITTHAL CHORE

VERSUS

PRALHAD TULSHIRAM CHORE AND OTHERS

Office Notes, Office Memoranda of Coram,
appearances, Court's Orders or directions and
Registrar's order

Court's or Judge's Order

Mr. Aniket Sawal, Advocate for the petitioner.
Mr. A. M. Tirukh, Advocate for respondent nos.1 to 3.

CORAM : M. W. CHANDWANI, J.

DATE : FEBRUARY 04, 2026.

1. Heard Mr. Aniket Sawal, learned counsel appearing on behalf of the petitioner and Mr. Ankush Tirukh, learned counsel appearing on behalf of respondent nos.1 to 3.

2. The challenge in this petition is to the orders dated 18.10.2023 and 24.09.2024 passed by the learned Ad-hoc District Judge-1, Khamgaon (for short “the Appellate Court”) below Exh.14 and Exh.19, respectively, in Regular Civil Appeal No. 11/2017, thereby rejecting the applications filed by the petitioner i.e. appellant/original defendant seeking permission to produce additional evidence and amendment in the original written statement.

3. The contention is that the rule for amendment of the plaint and the written statement stand on different

footings. Addition of new ground of defence or substituting or altering the defence or taking inconsistent pleas in written statement can be allowed as long as the amended pleadings do not result in causing grave injustice and irretrievable prejudice to plaintiff or displacing him completely. However, the Appellate Court did not consider this aspect and the applications for amendment to the written statement at appellate stage and permitting to lead additional evidence which ought to have been allowed, were rejected.

4. The contention is opposed by the respondents i.e. original plaintiffs on the ground that the proposed amendment in the written statement which leads to withdrawal of the earlier admission cannot be allowed. Therefore, according to the learned counsel for the respondents, both the applications were rightly rejected by the Appellate Court.

5. Perusal of the impugned orders reveal that after suffering decree for partition wherein the petitioner had admitted that the suit property i.e. land bearing Gat no. 174 is the ancestral property, he filed an application (Exh.19) for amendment in the written statement before the Appellate Court stating that the agricultural land bearing Gat No. 174 was bequeathed to him by his mother Anusayabai by executing a Will Deed in his favour. The petitioner along with the said application also moved an

application (Exh.14) under Order 41 Rule 27 of the Civil Procedure Code, 1908 for allowing him to produce the said Will Deed on record and adduce additional evidence.

6. The learned Appellate Court observed that the said Will has been allegedly executed on 03.02.2004 by Anusayabai, the mother of the petitioner. She died on 17.06.2005 and the Will was found by the petitioner on 15.01.2023. Whereas, the suit has been filed by the respondent for partition in the year 2014 which was decreed in the year 2017. During the said period, the petitioner could not find the Will Deed and after almost 19 years from execution of alleged Will Deed and almost 18 years after death of his mother, the petitioner has come up with a case of finding the said Will in a trunk which itself shows that the case of the petitioner does not fall under the Exception that in spite of due diligence he was unable to find the Will prior to 2023. Therefore, the finding recorded by the learned Appellate Court refusing production of the document and additional evidence on record, cannot be faulted with.

7. So far as reliance placed by learned counsel for the petitioner on the decision of the Hon'ble Supreme Court in *Usha Balasaheb Swami and others vs. Kiran Appaso Swami and others*, reported at (2007) 5 SCC 602 is concerned, no doubt the contrary defence is permissible but in the case at hand though, initially the petitioner had admitted in his written statement that the suit property

was a joint undivided property of the petitioner and the father of the respondents, now by way of the additional evidence and amendment, the petitioner seeks withdrawal of the said admission alleging that the suit property belongs to him by virtue of the said Will Deed. Therefore, the decision in ***Usha Balasaheb Swami*** (supra) will not be applicable in the facts of the present case. Rather, in the above decision, the Supreme Court also held that admission cannot be withdrawn by way of an amendment of written statement.

8. The petition is devoid of merits and deserves to be dismissed. Accordingly, the writ petition is dismissed.

(M.W.Chandwani, J.)

Diwale