



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

WRIT PETITION NO. 5424 OF 2025

Madhukar Nilkanthrao Kundalwar, Age: 64 years, Occ:
Retired, R/o New Subhedar Layout, Ayodhya Nagar, Nagpur.

PETITIONER

VERSUS

1. Surekha Yashwantrao Kundalwar, aged 61 years, Occ:
Agriculturist, R/o Pimpri Zara, Post Naigaon,
Tq. Babhulgaon, District Yavatmal.
2. State of Maharashtra, through District Collector,
Yavatmal, District Yavatmal.

RESPONDENTS

Shri Sandeep Marathe, counsel for the petitioner.
Shri Madhur Deo, counsel for the respondent no.1.
Ms P.T. Joshi, Assistant Government Pleader for the respondent no.2.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : FEBRUARY 17, 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 challenges the orders passed by the trial Court allowing the application for amendment of plaint.

3. The petitioner is the original defendant no.1 in the suit filed by the respondent no.1 seeking declaration and permanent injunction with respect to the agricultural land admeasuring 6 Hectare 52 Are out of Survey no.89, as described in the plaint. The defendants in the suit had filed their written statement and issues came to be framed. Before evidence commenced, the plaintiff filed applications at Exhibits 38 and 41 seeking amendment of plaint which came to be allowed by order dated 24.07.2024, which are subjected to challenge by way of instant petition.

4. Shri Sandeep Marathe, learned counsel for the petitioner submitted that the applications for amendment are an attempt to introduce a time barred claim which deserved to be rejected. He submitted that by way of proposed amendment, the plaintiff is attempting to raise new claims which will change the nature of the suit, particularly because by way of proposed amendment, a declaration with respect to a document of Will dated 15.04.1993 is sought to be claimed. He also submitted that the earlier application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 filed by the defendant was partly allowed and the suit for declaration about mutation was dismissed and the plaint was rejected to that extent and in view of this, further amendment of plaint to raise a claim for declaration on the basis of Will deserved to be rejected.

5. While opposing the petition, Shri Madhur Deo, learned counsel for the respondent no.1 submitted that the amendment applications are filed before commencement of trial and the proposed amendments are necessary for deciding the controversy involved in the suit. He submitted that the contentions of the petitioner about the claim being time barred would be subject matter of adjudication during trial and the plaintiff cannot be deprived of an opportunity to introduce necessary pleadings and lead evidence about his case. In support of his submissions, he placed reliance on the judgment of the Hon'ble Supreme Court in ***Pankaja & Another Versus Yellappa (Dead) by LRs. & Others*** [(2004) 6 SCC 415] and submitted that the amendment application could not be rejected merely on the ground of the proposed amendment being barred by limitation.

6. While considering the controversy involved in the petition, it has to be seen that the applications for amendment at Exhibits 38 and 41 are filed by the plaintiff before commencement of trial. The suit is filed by the plaintiff for declaration and permanent injunction in which the defendant has filed written statement alongwith the counter claim. The proposed amendment with respect to the document of Will dated 15.04.1993 and the pleadings in that regard appear to be connected with the controversy involved in the suit. Undisputedly, the amendment applications are filed before the commencement of trial.

7. The position of law with respect to an amendment to introduce a time barred claim is considered by the Hon'ble Supreme Court in ***Pankaja & Another*** (supra) and it has been held that an application for amendment of pleadings should not be disallowed merely because it is opposed on the ground that it is barred by limitation, on the contrary, the application will have to be considered bearing in mind the discretion that is vested in the Court for allowing or disallowing the amendment in the interest of justice. As such, in the instant case it has to be seen that, by exercising its discretion, the trial Court has allowed the application for amendment by considering the pleadings of the parties on the basis of plaint and written statement alongwith counter claim and by further considering the fact that the trial in the suit is not commenced. In view of this, since there is no perversity in the approach adopted by the trial Court in allowing the amendment, I do not find any necessity to interfere with the impugned orders.

8. It has to be noted that the issue of limitation with respect to the claim raised by the plaintiff by way of amendment, about document of Will dated 15.04.1993 will be a subject matter of adjudication before the trial Court. This petition has dealt with the issue of allowing a party to amend the plaint and the issue of limitation with respect to the claims raised by the plaintiff are kept open.

9. For the reasons mentioned hereinabove, no interference is warranted under Article 227 of the Constitution of India with the orders passed by the trial Court allowing the amendment applications. The instant petition therefore deserves to be dismissed and the same is dismissed with no order as to costs. However, considering the controversy involved in the matter and the respective ages of the parties therein, the trial Court is directed to decide the suit expeditiously. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)