



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

**WRIT PETITION NO. 6724 OF 2025**

Ghanshyam Motilalji Laddha, Aged 59 years, Occ:  
Business, R/o Chhangani Nagar, Amravati,  
Taluka and District Amravati.

**PETITIONER**

**VERSUS**

1. Bhupendra Mansukhlal Bhatti, Aged 51 years,  
Occ: Business, R/o Indrabhuvan Theatre, Amravati,  
Taluka and District Amravati.
2. Hemant Panjabrao Wanve, Aged 52 years, Occ:  
Agriculturist, R/o Mahuli Jahagir, Taluka and  
District Amravati.
3. Kailash Ramchandra Sharma, Aged 55 years,  
Occ: Business, R/o Vilas Nagar, Amravati,  
Taluka and District Amravati.

**RESPONDENTS**

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Shri A.J. Gilda, counsel for the petitioner.  
Shri K.P. Mahalle, counsel for the respondent nos.1 and 2.  
Ms Ayushi H. Dangre, counsel for the respondent no.3.

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**CORAM : PRAFULLA S. KHUBALKAR, J.**

**DATE ON WHICH ARGUMENTS WERE HEARD : MARCH 18, 2026**

**DATE ON WHICH JUDGMENT IS PRONOUNCED : MAY 06, 2026**

**JUDGMENT**

Heard. **RULE.**

2. By this petition, the petitioner has challenged the order dated 03.10.2025 passed by the trial Court allowing an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, 'the Code') for amendment of plaint.

3. The petitioner is the original defendant no.2 and the respondent nos.1 and 2 are the original plaintiffs whereas the respondent no.3 is the original defendant no.1 in the suit.

4. The respondent nos.1 and 2 had filed Special Civil Suit no.127 of 2018 seeking specific performance of contract against the respondent no.3 in respect of the suit property described in the plaint. It is the plaintiffs' case that they have entered into an agreement to sell dated 06.01.2018 with the defendant no.1 for purchase of the property. However, the defendant no.2 has purchased the suit property from the defendant no.1 vide sale-deed dated 12.07.2018. In this regard, the plaintiffs have incorporated pleadings in the plaint vide paragraphs 9-A and 9-B that the sale-deed dated 12.07.2018 executed by the defendant no.1 in favour of the defendant no.2 is illegal, null and void and not binding upon the plaintiffs. The suit proceeded further and at the stage of final arguments, the plaintiffs filed an application under Order VI Rule 17 of the Code by which the plaintiffs had sought amendment of plaint to add prayer clause to seek declaration that the sale-deed is null and void. It is the plaintiffs' contention that although there were pleadings in the plaint, the prayer regarding the effect of the sale-deed being null and void and not binding upon them, remained to be incorporated and the amendment is necessary for deciding the controversy effectively and finally. The amendment application was strongly opposed by the defendants and by order dated 03.10.2025, the trial Court allowed the application subject to costs of Rs.5,000/- to be payable to the defendants. This order is subjected to challenge by way of instant petition.

5. Shri A.J. Gilda, learned counsel for the petitioner vehemently submitted that the impugned order is unsustainable in law since the trial

Court has allowed an amendment which is clearly barred by limitation and the amendment application filed at the stage of completion of arguments deserved to be rejected. He submitted that the plaintiffs' attempt to amend the plaint is to fill up the lacunae and the same would cause serious prejudice to the rights of the defendant no.1. He also strenuously opposed the amendment application by contending that the plaintiffs have failed to demonstrate any due diligence and the amendment application was required to be rejected in view of the proviso to Order VI Rule 17 of the Code. In support of his submissions, the learned counsel for the petitioner placed reliance on the following judgments:-

- a. *Basavaraj Versus Indira & Others* [(2024) 3 SCC 705].
- b. *B.Nandini Raju Versus Raghuvari & Others* [2025 SCC OnLine Bom 1110].
- c. *Smt.Shashikala Sriram Shetty Versus Jagannath Honnaya Shetty (deceased) & Others* [Writ Petition No.18933 of 2024], decided on 09.06.2025.
- d. *J.Samuel Versus Gattu Mahesh* [2012(4) Mh.L.J. (S.C.) 40].
- e. *Sau.Anita Anant Kaidalwar Versus Suhas Manoharrao Umathe & Others* [2024 SCC OnLine Bom 707].
- f. *Chhabubai Haribhau Badakh Versus S.H. Khatod and Sons & Another* [2009(6) Mh.L.J. 760].
- g. *T.N. Alloy Foundry Co.Ltd. Versus T.N. Electricity Board & Others* [(2004) 3 SCC 392].

By pointing out the position of law as laid down by the Hon'ble Supreme Court in *Basavaraj* (supra), he submitted that while deciding an identical

controversy with respect to an amendment to add a prayer clause in the suit for raising a challenge to the compromise decree, it has been held that the amendment deserved to be rejected since a fresh suit to challenge the said compromise decree was barred by limitation and in view of this, he submitted that even in the instant case, the amendment to incorporate a time barred claim deserved to be rejected. By placing reliance on the judgment in *B.Nandini Raju*, *Smt.Shashikala Sriram Shetty* and *J.Samuel* (supra), he submitted that the amendment application after commencement of trial without demonstrating due diligence is liable to be rejected since the proviso to Order VI Rule 17 of the Code restricts the power of the Court to entertain an application without demonstrating due diligence. He submitted that in the instant case, the only reason about inadvertence as stated in the application for amendment does not at all constitute any due diligence and the amendment application was liable to be rejected. He invited attention to the position of law as laid down in the judgments in *Sau.Anita Anant Kaidalwar* and *Chhabubai Haribhau Badakh* (supra), which deal with the similar legal position.

6. Ms Ayushi Dangre, learned counsel for the respondent no.3 supported the contentions canvassed by the counsel for the petitioner.

7. Per contra, Shri K.P Mahalle, learned counsel for the respondent nos.1 and 2/original plaintiffs opposed the petition and submitted that the impugned order does not need any interference since the trial Court has arrived at a positive finding that the amendment is necessary for deciding

the actual controversy involved in the suit. He submitted that the plaintiffs have already pleaded in the plaint vide paragraphs 9-A and 9-B about the illegality of the sale-deed and as such, the prayer to incorporate a challenge to the sale-deed being null and void and not binding on them, is only in the nature of consequential and necessary relief. He submitted that the defendants to the suit are not taken by surprise as the plaintiffs are not attempting to introduce any new case. He submitted that the plaintiffs have candidly stated in the amendment application the necessity to incorporate the amendment and the same is rightly considered by the trial Court. He submitted that since the provision of Order VI Rule 17 of the Code can be invoked at any stage of the suit, the amendment application at the stage of final arguments is rightly entertained by the trial Court and therefore the petition needs to be dismissed. In support of his submissions, he placed reliance on several judgments which are stated below:-

- i. *Anil Ramsing Bilawar & Others Versus Anita Gopal Kadam & Another* [2022(2) Mh.L.J. 345].
- ii. *Mohammadrafi & Another Versus Bandenawaz & Others* [2025 SCC OnLine Kar 25113].
- iii. *Dilip Bastimal Jain Versus Baban Bhanudas Kamble & Others* [2001(3) Mh.L.J. 730].
- iv. *Amrik Singh Versus Darshan Singh & Others* [2019 SCC OnLine P&H 2093].
- v. *Mallavva & Another Versus Kalsammanavara Kalamma (Since Dead) by Legal Heirs & Others* [2024 SCC OnLine SC 3846].
- vi. *Devendra Sadho Versus Smt.Pramila Kumar & Others* [I.L.R. 2024 M.P. 54].

vii. ***Abdul Rehman & Another Versus Mohd.Ruldu & Others*** [(2012) 11 SCC 341].

viii. ***Life Insurance Corporation of India Versus Sanjeev Builders Private Limited & Another*** [(2022) 16 SCC 1].

8. By pointing out the position of law from the aforesaid judgments in ***Dilip Bastimal Jain*** and ***Amrik Singh*** (supra) he submitted that in the suit for specific performance of contract, the challenge to subsequent sale-deeds would be an ancillary relief and such amendment does not change the nature of the suit. By relying on the judgment in ***Mallavva & Another*** (supra), he submitted that an amendment cannot be refused only because of some inadvertent mistake on the part of the litigant in claiming a particular relief at an earlier point of time. By pointing out the legal position in this judgment, he submitted that in case the relief with respect to the sale-deed was inadvertently not claimed earlier, however considering the nature of the controversy, the plaintiffs need to be allowed to amend the plaint. By relying on the judgment in ***Devendra Sadho*** (supra), he submitted that in view of the pleadings already incorporated being paragraphs 9-A and 9-B in the plaint in question, the relief of adding prayer clause is necessary and the application for amendment is rightly allowed. By relying on the judgment in ***Mohammadrafi & Another*** and ***Anil Ramsing Bilawar & Others*** (supra), he submitted that undue insistence on the requirement of due diligence has to be avoided and each case has to be decided on case to case basis. He submitted that in these cases, it has been held that the amendments can be allowed even if the

test of due diligence is not scrupulously fulfilled and the issue of due diligence can be outweighed by need to avoid multiplicity of litigation.

9. In the backdrop of the above submissions, rival contentions fall for my consideration.

10. It has to be noted that the application for amendment of plaint is filed at the stage of arguments of the defendant no.1. A perusal of the application for amendment at Exhibit 117 shows that the plaintiffs have only pointed out the details about the sale-deed dated 12.07.2018 and by only mentioning that there are pleadings in paragraphs 9-A and 9-B about the sale-deed dated 12.07.2018 executed by the defendant no.1 in favour of the defendant no.2, it is stated that the specific challenge to the sale-deed 'remained to be prayed in the prayer clause'. Therefore, permission is sought to amend the plaint to incorporate the relief in the prayer clause about declaration that the sale-deed dated 12.07.2018 is null and void and not binding upon the plaintiffs. As such, in the entire application, the plaintiffs have not stated any reason as to why the proposed prayer clause was not incorporated in the original plaint. It is crucial to note that the plaintiffs have incorporated pleadings in paragraphs 9-A and 9-B and as such they were aware about the sale-deed dated 12.07.2018 and in this background, it was necessary for the plaintiffs to demonstrate as to why the prayer clause was not earlier inserted. Thus, it is clear that the plaintiffs have not demonstrated any due diligence on their part. In view of the fact that the amendment application is filed after commencement of trial, considering the proviso to Order VI Rule 17 of the Code, the aspect

of due diligence assumes importance and apparently the plaintiffs have failed to establish due diligence on their part.

11. It has also to be noted that by way of amendment, the plaintiffs want to add prayer clause seeking declaration about the sale-deed dated 12.07.2018 being null and void. The application for amendment is filed on 14.08.2025 in the suit which was filed in the year 2018 and as such as on today the challenge to the sale-deed is a time barred claim. It has to be noted that as on today the plaintiffs are not entitled to file a separate suit challenging the sale-deed and as such the attempt to amend the prayer clause is also not permissible.

12. Pertinent to note, the proposed amendment to add the prayer clause is clearly not innocuous, rather the plaintiffs want to claim additional relief in the nature of declaration about the sale-deed being null and void. Thus, it is clear that allowing the application for amendment to add the aforesaid prayer clause will definitely change the nature of the suit at the stage of final arguments and the same is not permissible.

13. In this regard, the position of law as laid down by the Hon'ble Supreme Court in **Basavaraj** (supra) is relevant to be noted. While dealing with a strikingly similar controversy about the application for amendment of plaint seeking to add a prayer clause in the suit for declaration that the earlier compromise decree was null and void, the Hon'ble Supreme Court has held that the time barred claim by way of amendment cannot be permitted. The justification put forth by the parties in that case about

oversight for not incorporating the prayer was not accepted by the Hon'ble Supreme Court. It has been observed that since a fresh suit challenging the compromise decree may not be maintainable being time barred, the amendment introduced to raise a challenge to the compromise decree was also time barred. The observations recorded by the Hon'ble Supreme Court in paragraph 16 of the judgment in **Basavaraj** (supra) are reproduced below:-

*“16. In the case in hand, the compromise decree was passed on 14-10-2004 in which the plaintiffs were party. The application for amendment of the plaint was filed on 8-2-2010 i.e. 5 years and 03 months after passing of the compromise decree, which is sought to be challenged by way of amendment. The limitation for challenging any decree is three years (reference can be made to Article 59 in Part IV of the Schedule attached to the Limitation Act, 1963). A fresh suit to challenge the same may not be maintainable. Meaning thereby, the relief sought by way of amendment was time-barred. As with the passage of time, right had accrued in favour of the appellant with reference to challenge to the compromise decree, the same cannot be taken away. In case the amendment in the plaint is allowed, this will certainly cause prejudice to the appellant. What cannot be done directly, cannot be allowed to be done indirectly.”*

14. It is trite law that where the plaintiff in a suit seeks to amend the plaint based on a cause of action which has already arisen at the time of institution of the suit, a time barred relief cannot be permitted to be introduced by way of amendment. In view of Article 58 of the Limitation Act, 1963, the limitation to challenge the legality and validity of the sale-deed is three years. In the instant case, the plaintiffs have already incorporated the pleadings about the sale-deed in the plaint and thus had clear knowledge about the existence of the sale-deed and thus the cause of

action to seek any declaration about the sale-deed being null and void had already arisen. In view of this, the proposed amendment application filed in the year 2025 is clearly an attempt to introduce a time barred claim. Thus, the case of the petitioner is squarely covered by the judgment of the Hon'ble Supreme Court in **Basavaraj** (supra) and the amendment application deserves to be rejected. The reliance placed by the counsel for the petitioner upon the judgments in **B.Nandini Raju** and **Smt.Shashikala Sriram Shetty** (supra) dealing with identical controversy also appears to be appropriate.

15. As regards the judgments relied upon by the counsel for the respondent nos.1 and 2, the position of law as laid down therein is not disputed. It has to be noted that although he has invited my attention to the legal position as considered by the Punjab and Haryana High Court in **Amrik Singh** (supra), it has to be noted that the relief claimed by way of proposed amendment since termed as ancillary and consequential, the plaintiffs would be otherwise entitled to claim the necessary effect of decree if at all the suit is decreed in their favour. Although he has relied on the legal position as laid down in **Anil Ramsing Bilawar & Others** (supra) and submitted that the issue of due diligence has to be considered on case to case basis, it has to be seen that in the instant matter, the application for amendment filed at the stage of final arguments does not at all contain any reasons for demonstrating due diligence. As such, even if the instant case is considered individually, the amendment to seek new

relief about declaration of the sale-deed being null and void, in my opinion, requires demonstration of due diligence. As such, the judgments relied upon by the counsel for the respondent nos.1 and 2 are not of any assistance to them.

16. Although the learned counsel for the respondent nos.1 and 2 relied upon the authoritative pronouncement of the Hon'ble Supreme Court in ***Sanjeev Builders Private Limited & Another*** (supra), it has to be noted that the Hon'ble Supreme Court has also observed in paragraph 71.4 that an amendment is generally allowed unless, by the amendment a time barred claim is sought to be introduced and the amendment changes the nature of the suit or by the amendment the other side would lose a valid defence. It has also been laid down that all amendments which are necessary for determining the real controversy are to be allowed provided it does not cause injustice or prejudice to the other side.

17. By considering the law laid down by the Hon'ble Supreme Court in ***Sanjeev Builders Private Limited & Another*** (supra), it is clear that an amendment which causes prejudice to the other side cannot be allowed. In the instant case, the amendment, if allowed, would definitely cause prejudice to the defendants and hence, the amendment application deserves to be rejected.

18. In view of the above mentioned factual and legal aspects, I am of the firm opinion that the impugned order allowing the application for

amendment at the stage of final arguments deserves to be quashed and set aside. Hence, the following order is passed:-

- I. The writ petition is allowed.
  - II. The order dated 03.10.2025 passed by the trial Court on an application at Exhibit 117 in Special Civil Suit No.127 of 2018 is quashed and set aside.
  - III. The application for amendment at Exhibit 117 in Special Civil Suit No.127 of 2018 is rejected.
  - IV. The trial Court is directed to expeditiously decide the civil suit.
19. Rule is made absolute in aforesaid terms with no order as to costs.

**(PRAFULLA S. KHUBALKAR, J.)**