



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

WRIT PETITION NO. 7492 OF 2025

Anil Marotrao Khobragade, Aged 70 years, Occ: Retired,
R/o Plot no.10, Nawab Area, Tilak Nagar, Ravi Nagar,
Ambazari, Nagpur.

PETITIONER

VERSUS

1. Nitesh Shashikant Khobragade, Aged 50 years,
Occ. Service, R/o Bailyshop Railway Colony,
Quarter no.L/98/1, Post-Bezonbagh, Nagpur.
2. Sanjay Marotrao Khobragade, Aged: Major, Occ: Service,
R/o Urjanagar, M.S.E.B. Colony, Quarter no.D/43/6,
Post-Urjanagar, Dist. Chandrapur.

RESPONDENTS

Shri M.R. Johrapurkar, counsel for the petitioner.
Shri C.F. Bhagwani, counsel for the respondent no.1.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : MARCH 07, 2026

ORAL JUDGMENT

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

2. This petition raises a challenge to the order dated 03.11.2025 passed by the trial Court rejecting the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, 'the Code').

3. The controversy arises out of probate proceedings bearing Probate no.6 of 2012 filed by the respondent no.1 under Section 276 of the Indian Succession Act, 1925 for grant of probate with respect to the Will-deed dated 24.09.2003. The proceedings are contested by the non-applicants and after evidence of both the parties was completed, at the stage of final arguments, the non-applicant no.1/petitioner herein filed an application, at Exhibit 118 for amendment of his written statement, which was opposed by the other side and by order dated 03.11.2025, it came to be

rejected. The petitioner/non-applicant no.1 has challenged this order by way of instant petition.

4. Shri M.R. Joharapurkar, learned counsel for the petitioner submitted that the proposed amendment is clarificatory in nature and is necessary for complete adjudication of the controversy involved in the probate proceedings. He submitted that the parties are contesting probate proceedings and in the earlier round of litigation up to this Court vide First Appeal no.1118 of 2015 decided on 07.04.2016, it has been observed by this Court that the probate proceedings be treated as 'contentious'. In view of this, he submitted that the non-applicants are entitled to raise all the pleas in support of their defence and the proposed amendment is therefore necessary.

5. Per contra, Shri C.F. Bhagwani, learned counsel for the respondent no.1 vehemently opposed the petition and submitted that the petitioner has failed to demonstrate due diligence and the application for amendment filed at the stage of final arguments deserved to be rejected. He submitted that the reason mentioned in the amendment application that the non-applicants noticed the details of the suit property only on 18.07.2025 are baseless since the non-applicants had ample opportunity to incorporate the said pleadings earlier. He submitted that the proposed amendment is an attempt to introduce a new plea and change the entire nature of defence in the probate proceedings. He therefore submitted that the amendment if allowed, would cause serious prejudice to the respondent no.1 and therefore justified the impugned order.

6. While considering the rival contentions, it has to be seen that the application for amendment has been filed at the stage of final arguments in the probate proceedings. A perusal of the amendment application reveals that the only reason mentioned is that the non-applicants noticed the details of the sale-deed dated 18.05.2007 only after obtaining the property card on 18.07.2025. A perusal of the amendment application reveals that the non-applicants have not demonstrated any due diligence as to why the proposed amendment was not incorporated earlier. It has to be noted that the first sale transaction relied upon by the petitioner was executed in the year 2007 and the second sale transaction is of January-2025. Thus, it is clear that the amendment application is filed without demonstrating any due diligence as required in view of proviso to Order VI Rule 17 of the Code.

7. It has also to be noted that the probate proceedings are primarily confined to determine the genuineness and validity of the Will-deed and although this Court has directed the proceedings to be contentious, requiring it to be decided like a civil suit, the requirements of proviso to Order VI Rule 17 of the Code have to be therefore applied. The learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in *Dinesh Goyal alias Pappu Versus Suman Agarwal (Bindal) & Others* [2024 SCC OnLine SC 2615] and the judgment of this Court in *Sheikh Bismilla Sheikh Bandu & Another Versus Jabiullakha Mujibullakha & Others* [2025 SCC OnLine Bom 1994] and the position of law laid down in these judgments is not disputed. However, in the instant

case, the petitioner/non-applicant no.1 has failed to demonstrate any due diligence and therefore the aforesaid judgments are not of any assistance to the petitioner. The reliance placed by the counsel for the respondent no.1 on the judgment of the Principal Seat of this Court in ***Shashikala Sriram Shetty Versus Jagannath Honnaya Shetty (deceased) & Others*** [Writ Petition no.18933 of 2024] dealing with the legal position therefore appears to be appropriate.

8. Having given due consideration to the factual and legal aspects and on perusal of the impugned order, it is clear that the trial Court has passed a well reasoned order. The view taken by the trial Court is a plausible view based on the documents on record. No perversity is seen with the impugned order warranting any interference on any count. In view of aforesaid, the writ petition is dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)