

MHSN150008872020



( Pandurang Hari Dhende (Dead) Through L.R.-Other  
V/s.  
Mahesh Anandrao Kadam-1 )

---

**ORDER BELOW EXHIBIT 48 IN**  
**REGULAR CIVIL SUIT No.19/2020**

{OLD REGULAR CIVIL SUIT No.439/2014}

{OLD REGULAR CIVIL SUIT No.117/2011}

1. This is an application filed by the plaintiffs under Order 6 Rule 17 of Code of Civil Procedure for grant of permission to carry out the amendment in the plaint.

2. Perused the application and say of defendants at Exhibit 50. Heard learned counsel for both side.

3. It is the contentions of the plaintiffs that, the present suit is filed by their predecessor Pandurang Hari Dhende for the possession of the suit property due to breach of contract against defendants. The plaintiffs being legal representative of the original plaintiffs have continued the suit. According to plaintiffs, while executing the agreement for sale in dispute in respect of the suit property in favour of defendants, their predecessor Pandurang Dhende had not obtained their consent. Thus, in the counter suit bearing Special Civil Suit No.14/2020 filed by defendants against

them, plaintiffs have contended in their written-statement that, the suit property is not yet partitioned and the original plaintiff Pandurang Dhende has executed the said agreement for sale in his personal capacity and without any legal necessity. Therefore, in pursuance of the same, the plaintiffs wants to contend about the same and also wants to seek the relief of declaration in the present plaint that, the said agreement for sale in dispute is not binding upon their share in the suit property. So, the plaintiffs wants to add in title clause the relief of declaration and suit valuation of Rs.2,000/- instead of Rs.1,000/-.

4. Thus, plaintiffs also wants to add paragraph No.6/A after paragraph No.6 in the plaint to contend that, the suit property was their ancestral property and same is not yet partitioned. The original plaintiff Pandurand Dhende had executed the agreement for sale in dispute without their written or oral consent and in his personal capacity without legal necessity and therefore said agreement for sale is not binding upon shares of plaintiffs in the suit property. The plaintiffs also wants to add the suit valuation of Rs.2,000/- in paragraph No.8 of the plaint and also wants to add the relief of declaration in paragraph No.11 of the plaint that, the agreement for sale in dispute executed by the original plaintiff Pandurang Hari Dhende is not binding upon their shares in the suit property.

5. According to plaintiffs, after the death of the original plaintiff Pandurang Dhende, their names being legal representatives

## **Regular Civil Suit No.19/2020**

**3**

*(Order below Exhibit 48)*

came on record and thereafter the present matter got transferred from the Civil Judge Senior Division Court at Sangli to the Court at Vita. Thereafter, the transfer notices were issued to the parties, and then the order of conducting joint trial of this suit with the counter suit came to be passed and therefore, the delay has been caused to them to file the present application. According to them, the proposed amendment is necessary and it will not change the nature of the suit. No prejudice would be caused, if the proposed amendment is allowed.

6. On the contrary defendants have resisted the application by submitting that, the present application is false and bogus. The plaintiffs have filed the present application after commencement of the trial and sought the proposed amendment at belated stage. The partial evidence in present suit is already recorded. Thus, the plaintiffs have not shown the due diligence. Likewise, plaintiffs have admitted the execution of the agreement for sale by their predecessor. The proposed amendment for the relief of declaration is also sought by the plaintiffs at belated stage. The plaintiffs have already an opportunity to file their say in counter suit bearing Special Civil Suit No.14/2020 filed by them. In spite of the same, since last 12 to 13 years, the plaintiffs have not seek the proposed amendment. The plaintiffs have filed the present application to fill up the lacuna. Thus, the predecessor of the plaintiffs have filed the present suit and the present plaintiffs being legal representative have no right to seek the proposed amendment.

Therefore, prayed to reject the application.

7. Learned counsel for defendants relied upon the judgment in *J. Samuel and others V/s. Gattu Mahesh and others 2012(4) Mh.L.J.*, wherein the Hon'ble Bombay High Court has observed that, the proviso of Order 6 Rule 17 of C.P.C. restricts power of the Court to permit the amendment of pleadings once the trial has commenced, unless the Court satisfy itself that there is reasonable cause for allowing the amendment, normally the Court has to reject such request. He further relied upon the judgment in *Chandrashekhhar Pandurang Tumsare V/s. Dr. Balkrishna Shivkaran Changani 2016(4) Mh.L.J. 389*, wherein the Hon'ble Bombay High Court has observed that, the amendment of written-statement could not be allowed, if the defendant could not satisfy Court that in spite of due diligence, he could not bring on record facts sought to be brought on record by proposed amendment.

8. Learned counsel for defendants relied upon the judgment in *Vidyabai and others V/s. Padmalatha and another (2009)2 Supreme Court Cases 409*, wherein the Hon'ble Supreme Court has observed that, while rejecting the amendment of written-statement the pre-condition that Court should be satisfied that in spite of due diligence, party could not introduce amendment before commencement of trial. He also relied upon the judgment in *Vishwambhar and others V/s. Laxminarayana (Dead) through L.Rs. And another A.I.R. 2001 Supreme Court 2607*, wherein the Hon'ble Supreme Court has observed that, in a suit for recovery of

## Regular Civil Suit No.19/2020

5

(Order below Exhibit 48)

possession, the prayer for setting aside sale deed made by amendment after period of three years have elapsed from the date minor attend majority, then such suit is liable to be dismissed.

9. He further relied upon judgment in *Munilal V/s. Oriental Fire and General Insurance Company Limited* reported in (1996) 1SCC 90, wherein the Hon'ble Supreme Court has observed that, application under Order 6 Rule 17 filed in Appellate Court seeking consequential relief by amendment of pleading after the suit was barred by limitation during pendency of the Appeal cannot be allowed.

10. Considering the contentions of both side and on perusal of the record and citation relied upon, it appears that, the present suit is filed by the original plaintiff for the possession of the suit property due to breach of contract. The plaintiffs being legal representatives have continued the present present suit and the same is pending for the evidence of the plaintiffs. Admittedly, in the counter suit bearing Special Civil Suit No.14/2020 filed by defendants for specific performance of the contract, as per order dated 27/11/2015 below Exhibit 40, the trials of both these suits were directed to be heard and decide together and directed to record the evidence together in Special Civil Suit No.14/2020 (Old Special Civil Suit No. 318/2011) only. Accordingly, the defendants in the present suit have lead their evidence together in respect of both suits in in Special Civil Suit No.14/2020 and yet the plaintiffs

in present suit has to lead their evidence together in respect of both suits in counter suit bearing Special Civil Suit No.14/2020. Thus, the present suit is yet pending for leading the evidence of the plaintiffs together in Special Civil Suit No.14/2020.

**11.** According to the plaintiffs, their predecessor i.e. original plaintiff had executed an agreement for sale in dispute without their consent and despite the suit property was ancestral and is yet not partitioned. Therefore, said agreement for sale is not binding upon them and hence the plaintiffs wants to add the relief of declaration that, the said agreement for sale in dispute is not binding upon them and to carry out amendment accordingly, as stated above in the plaint. In the present suit, the plaintiffs being legal representatives of original plaintiff are not necessarily bound to continue litigating in the plaintiff's original legal character. They can seek to amend the additional prayer in the present counter-suit to reflect their own legal interest and the nature of the deceased plaintiff's estate.

**12.** The plaintiffs have further contended that, after the death of original plaintiff, they being legal representatives came on record and continued the present suit. However, the present matter was transferred from the Civil Judge Senior Division Court at Sangli to the Court at Vita. Thereafter, the transfer notices were issued to the parties and then the order of conducting trail of this suit with Special Civil Suit No.14/2020 came to be passed and therefore the delay has been caused to file the present application to seek

**Regular Civil Suit No.19/2020**

7

*(Order below Exhibit 48)*

proposed amendment. Thus, the plaintiffs have shown the sufficient cause as to why the delay has been caused to file the present application.

13. Learned counsel for the defendants argued that, the proposed amendment for the relief of declaration is sought by the plaintiffs at belated stage and as such barred by limitation. However, considering the contentions of the plaintiffs in the present suit, it is seen that, the plea of limitation is arguable and the said issue of limitation in respect of the relief sought by way of proposed amendment is disputed question of fact. In the judgment of ***Ragu Thilak D. John V/s. S. Rayappan and Others reported in AIR 2001 SC 699***, wherein the Hon'ble Supreme Court has observed that, even if a relief sought by way of amendment is barred by limitation, the amendment may still be allowed if the limitation is a disputed question of fact. The Court can frame an issue regarding limitation after allowing the amendment.

14. Thus, in the present suit the issue of limitation in respect of the relief sought by way of proposed amendment is disputed question of fact. If, plea of limitation is arguable, the Court may allow the amendment and treat the limitation issue as a matter of trail. Therefore, if the proposed amendment is allowed, it will serve the interest of justice and it will minimize the litigation. Therefore, the ratio laid down in the aforesaid citation is squarely applicable in the present matter. Therefore, it will not just and

proper to reject the application merely on the ground that, the proposed amendment sought by the plaintiffs for declaration at belated stage.

15. The plaintiffs being the legal representatives of the original plaintiff, by way of proposed amendment, are seeking the relief of declaration that, the agreement for sale in dispute is not binding upon their share in the suit property. In *South Konkan Distilleries V/s. Prabhakar Gajajan Naik reported in AIR 2009 SC 1177*, the Hon'ble Supreme Court has observed that, the Court must be extremely liberal in granting the prayer of amendment of pleading. If the Court is of the view that, such amendment is not allowed, a party, who has prayed for such as amendment shall suffer irreparable loss and injury. It is always open to the Court to allow an amendment if it is of the view that allowing of an amendment shall really subserve ultimate cause of justice and avoid further litigation.

16. Thus, in the present suit, the plaintiffs being the legal representatives of the original plaintiff, by way of proposed amendment, are seeking the relief of declaration that, the agreement for sale in dispute is not binding upon their share in the suit property. In both the suits, the plaintiffs herein has yet not lead any evidence together in support of their contention. Therefore, in order to decide the entire question in controversy between the parties in respect of the suit property and to avoid the multiplicities of the suits, the proposed amendment sought by the plaintiffs is necessary.

**Regular Civil Suit No.19/2020**

9

*(Order below Exhibit 48)*

Thus, the proposed amendment is bona-fide and relevant and it will not change the nature of suit. No prejudice would be caused to the defendants, if proposed amendment is allowed. The proposed amendment is necessary for the purpose of determining the real question in controversy between the parties in respect of suit property. Hence, the citations relied upon by defendants are not applicable in present matter in hand. Therefore, in view of above reasons, it will just and proper to grant the permission to the plaintiffs herein to carryout proposed amendment as sought in the plant. Hence I proceed to pass the following order.

**ORDER**

1. The application Exhibit 48 is allowed and the plaintiffs are permitted to carry out the amendment as sought in the plaint, within stipulated period or by next date and supply the copy of amended plaint and copy to the defendants.
2. Costs in cause.

**Vita.**  
**Date: 07/05/2025**

**(Dnyaneshwar S. Patale)**  
**Jt. Civil Judge Senior Division, Vita.**

I affirm that, the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of the Stenographer : S. P. Pethkar.  
Court : Jt. Civil Judge Senior Division, Vita.  
Judgment/Order signed by  
the Presiding Officer on : 07/05/2025.  
Judgment/Order uploaded on : 08/05/2025.