**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 11242 OF 2018**

**WITH**

**INTERIM APPLICATION NO. 3631 OF 2026**

Smt. Subhadrabai Tukaram Kate ***...Petitioner***

***: Versus :***

Mrs. Sindhu Bhaskar Dhote and others. ***...Respondents***

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**Mr. Surel Shah, Senior Advocate** with Mr. Kishor Patil, Mr. Amol Mhatre, Mr. Anish Kikle, Ms. Akshada Nargale & Mr. Sakshat Relekar, for the Petitioner.

**Mr. Anil Anturkar, Senior Advocate** with Mr. Sandeep Phatak & Mr. Adhik Kadam, for Respondent No. 2.

**Mr. Nilesh Wable**, for Respondent No. 5(a) to 5(j).

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**CORAM: SANDEEP V. MARNE, J.**

**RESERVED ON: 12 OCTOBER 2026.**

**PRONOUNCED ON: 28 OCTOBER 2026.**

**Judgment:**

**1)** Petitioner has filed this Petition challenging the order dated 23 April 2018 passed by the 2nd Joint Civil Judge Senior Division Vadgaon Maval, Pune rejecting the application for amendment of the plaint at Exhibit 70 filed in Regular Civil Suit No. 85 of 1995.



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**2)** Plaintiffs filed Regular Civil Suit No. 85 of 1995 in the Court of Civil Judge Junior Division, Vadgon, Maval, Pune seeking a declaration that they are the owners and possessors of the suit properties and Defendants have no title therein. Alternatively, it is prayed that if the suit properties are found to be in possession of the Defendants, possession thereof shall be handed over to the Plaintiffs. In para-1 of the plaint, the suit properties are described as agricultural lands bearing Gat No. 583 and Gat No. 612 at Village-Karla, Taluka-Vadgaon-Maval, District-Pune.

**3)** Defendant No.1 appeared in the Suit and filed Written Statement. It appears that Plaintiff's suit was dismissed for default by order dated 10 February 2000. After about 9 long years, the suit came to be restored on 30 September 2009. During the period the suit was dismissed, several transactions relating to land bearing Gat No. 583 and land bearing Gat No. 612 took place. After restoration of the Suit, Plaintiffs took out application at Exhibit 44 on 26 February 2013 seeking amendment of the suit for challenging sale-deed dated 26 December 2008 executed by Defendant Nos.1 and 3 in respect of the land bearing Gat No. 583. The amendment was allowed and prayer clause c(1) is incorporated in the Suit for setting up challenge to sale-deed dated 26 December 2008 *qua* land bearing Gat No.583.

**4)** Accordingly, Bharat Kantilal Agarwal, Harish Dhote and Mahendra Kering were impleaded as Defendant Nos.2 to 4 in the suit for challenging sale-deed dated 26 December 2008 *qua* Gat No. 583. Plaintiff No.1 thereafter filed one more application for amendment on 27



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November 2017 for impleadment of Mr. Mahaverprasad Dangi and Mr. Samit Agarwal as Defendant Nos.5 and 6 and for incorporating various other averments in the plaint. By way of the proposed amendment sought through an application dated 27 November 2017, the Plaintiff No.1 sought to correct the description of the suit property in paragraph 1(b) by substituting Gat No. 602 for Gat No. 612 and by adding the words "in respect of the Plaintiff's ownership and possession of an area admeasuring 1 hectare 04 R". Petitioner has also sought to challenge various sale deeds and other documents such as agreement dated 31 March 2008, sale deed dated 26 December 2008, Power of Attorney dated 2 December 2006, sale-deed dated 15 December 2006, sale-deed dated 15 March 2007. Petitioner's application for amendment was resisted by the Defendants by filing reply. By order dated 23 April 2018, the Trial Court has rejected the application for amendment at Exhibit-70. Aggrieved by the order dated 23 April 2018, the Plaintiff No.1/ Petitioner has filed the present petition, impleading Plaintiff No. 2 as Respondent No. 5.

**5)** Mr. Shah, the learned senior advocate appearing for the Petitioner/Plaintiff No.1 submits that the Trial Court has erred in rejecting the application for amendment. He submits that the suit property described in paragraph 1(b) is erroneously referred to as Gat No. 612, whereas, in fact, the land in respect of which the parties claim rival rights is Gat No. 602. That there is a typographical error in description of the suit property in paragraph 1(b) and this inadvertent error is required to be corrected by amending the plaint. He invites attention of the Court to averments made in the Written Statement in which Defendant No.1 has claimed title by adverse possession in respect of land bearing Gat No.



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612. That Defendant No. 1 was clearly aware of the fact that she was defending the suit *qua* the land bearing Gat No. 612 and not in respect of the land bearing Gat No. 602. That the Trial Court has erroneously held that Plaintiffs have field copy of 7/12 extract of land bearing gat No. 612 when in fact what is filed is 7/12 extract of land bearing Gat No. 602. He submits that for the purpose of deciding the real question of controversy between the parties, it is necessary that correct description of the suit property is brought before the Court. That the amendment *qua* correction in description of the suit property was formal in nature and ought to have been allowed.

**6)** Mr. Shah submits that the Trial Court erred in holding that the amended prayers seeking challenge to various sale-deeds are barred by limitation. He submits that the Plaintiffs are not signatories to the main instruments and therefore, the said instruments, having been executed by persons who did not have ownership of the land, are void ab initio and cannot affect Plaintiffs' ownership in the suit properties. He submits that the Plaintiffs have sought a declaration that the impugned sale deeds are not binding on their respective shares and, therefore, the limitation prescribed under Article 59 of the Limitation Act, 1963, is not applicable. In support he relies on judgment of the Apex Court in ***Shanti Devi (since deceased through Lrs) Versus. Jagan Devi and others***[1].

**7)** Mr. Shah further submits that the Trial Court has grossly erred in applying Proviso to Order 6 Rule 17 of the Code of Civil Procedure,1908 **(Code)** requiring establishment of due diligence

1 2025 SCC Online SC 1961



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ignoring the position that the suit has been instituted in the year 1995 i.e. before coming into effect of the CPC (Amendment) Act, 2002. Relying on judgment of the Apex Court in ***State Bank of Hyderabad Versus. Town Municipal Council***[2] , Mr. Shah submits that the Proviso to Order 6 Rule 17 of the Code cannot apply to the present suit. He submits that if there is any delay in applying for amendment, the opposite party can always be compensated by imposition of costs and in support he relies on judgments of the Apex Court in ***Surendra Kumar Sharma Versus. Makhan Singh***[3] and ***Sajjan Kumar Versus. Ram Kishan***[4]. Mr. Shah further submits that if the proposed amendment is not allowed, it would seriously impair the adjudication of the subject matter of the controversy raised in the suit. He prays for setting aside the impugned order.

**8)** Mr. Anturkar, the learned senior advocate appearing for Respondents opposes the Petition submitting that the Trial Court has rightly rejected Plaintiff's application for amendment. He submits that change in description of suit property in paragraph 1(b) from Gat No.612 to Gat No.602 does not solve the problem since boundaries of Gat No. 612 are descried in the plaint. He invites attention of the Court to the earlier application for amendment filed in the year 2013 where Plaintiffs sought to incorporate challenge to the sale-deed dated 26 December 2008 by which land in Gat Nos. 583 and 602 are sold. However, Plaintiffs consciously restricted their challenge to the sale-deed dated 26 December 2008 only in respect of land forming part of Gat No. 583. There is deliberate omission by the Plaintiffs to challenge sale deed dated 26

2 (2007) 1 SCC 765
3 2009 10 SCC 626
4 (2005) 13 SCC 89



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December 2008 *qua* Gat No.602 knowing fully well that the same is not the subject matter of the suit. It is therefore difficult to believe that there is an inadvertent error in description of the suit property in paragraph 1 of the plaint.

**9)** Mr. Anturkar further submits that Petitioner's proposed prayers for challenging various documents is clearly barred by limitation. That the ratio of the judgment of the Apex Court in ***Shanti Devi*** (supra) does not apply to the present case as Plaintiffs are not declared to be the owners of the suit properties. That the suit is filed for seeking declaration of ownership. That, in any event, the Plaintiffs are not restricting the prayers in the amendment application seeking a declaration that the deeds do not bind their respective shares. On the other hand, they have expressly challenged various deed thereby attracting the period of limitation prescribed in Article 59 of the Limitation Act. He therefore submits that the Trial Court has rightly rejected Plaintiff No.1/ Petitioner's application for amendment. He prays for dismissal of the application.

**10)** Rival contentions urged on behalf of the parties now fall for my consideration.

**11)** Plaintiffs have filed R.C.S. No. 85 of 1995 seeking declaration of title and possession *qua* the suit properties. In the Plaint, they have alleged that land bearing Survey No. 186, Hissa No.1A and Survey No. 186, Hissa No. 3 + 4 were collectively possessed by Rama Kate as tenants. His son, Tukaram Kate started cultivating the land as tenants. It is



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pleaded that Tukaram Kate purchased the said lands under Section 32(g) of Bombay Tenancy and Agricultural Lands Act, 1948 and his name was mutated to the records of rights as owner thereof. Plaintiff No.1 is the wife and Plaintiff No.2 is the sister of Tukaram Kate. It is alleged in the plaint that land bearing Survey No. 186/1A and 186/3 + 4 are converted into Gat Nos.583 and 612 after implementation of the Consolidation Scheme. This is how suit is filed in respect of the land bearing Gat Nos. 583 and 612. The description of the suit properties in paragraph 1 of the plaint is as under:

> १. मिळकतीचे वर्णन : तुकडी पुणे, पोट तुकडी मावळचे सब रजिस्टार साहेब हद्दीतील पुणे जिल्हा परिषदेच्या वडगांव मावळ पंचायत समितीच्या हद्दीतील गांव मौजे कार्ला येथ जमिनी
>
> अ) गट नं.५८३ यांसी क्षेत्र०० हे १४ आर, आार रू. ०० रू ५४ पैसे यांसी चतुःसिमा पुढीलप्रमाणे :-
>
> पुर्वेस - गट नं.५८१
> दक्षिणेस - गट नं. ५८२
> पश्चिमेस - गट नं. ५८४
> उत्तरेस - गट नं. ८५
>
> ब) गट नं.६१२ यांसी क्षेत्र ०५ हे. ०७.४ आर, आकार रू.१८ रू १८ पैसे यांसी चतृःसिमा पुढीलप्रमाणे :-
>
> पुर्वेस - गट नं. ६११
> दक्षिणेस - गट नं. ५८०
> पश्चिमेस - गट नं. ६१३
> उत्तरेस - गट नं. ५८१
>
> येणेप्रमाणे चतृःसिमापुर्वक जमिनी, हयांना येथुन पुढे दावा मिळकत असे संबोधले आहे. व त्या दाव्याचा विषय आहेत.

**12)** According to Plaintiffs, Defendant got her name mutated in respect of the suit properties in the year 1985 by mutation entry no. 3024 even though he had never purchased the suit properties from Tukaram Kate. It is pleaded in the plaint that Tukaram Kate never sold the suit



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property to the Defendant, Sindhu Bhaskar Dhote, and that the Defendant erroneously informed the Talathi that such sale had taken place. Plaintiffs have claimed possession in respect of the suit properties. This is how the suit is filed seeking a declaration of ownership and possession in respect of the suit properties bearing Gat Nos. 583 and 612. A positive declaration is sought that Defendant No.1 does not have any right, title and interest in the suit property and an alternative prayer is raised for possession in the event it is found that Defendant is in possession of the suit properties.

**13)** Defendant No.1 appeared in the suit and filed Written Statement contending *inter-alia* that in the year 1972, Tukaram Kate sold land bearing Survey Nos. 186/1A and 186/3 + 4 to the Defendant No.1 Alternatively, a plea of acquisition of title by adverse possession is also raised in the Written Statement.

**14)** As observed above, the suit was dismissed for default by order dated 10 February 2000 and the same appears to have been restored 9 years later on 30 September 2009. This position is apparently not disclosed in the memo of the Writ Petition. Plaintiff has also amended the suit once by filing application at Exhibit 44 and this position is again not disclosed in the petition. The first amendment granted in the year 2013 is in respect of challenge to the sale deed dated 26 December 2008. After the 2013 amendment, the amended prayers in the plaint read thus:

> ८. तरी वादीची विंनती की-
>
> अ. वादी हे दावा मिळकतीचे कायदेशीर मालक व कब्जेदार असल्याचे घोषित करण्यात यावे.



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ब. दावा मिळकतीवर प्रतिवादीचा मालकी हक्क नाही असे ठरविण्यात यावे.

क. दावा मिळकती हया प्रतिवादीचे ताब्यात असल्याचे सिध्द झाल्यास प्रतिवादीने वादीस दावा मिळकतीचा खुला व प्रत्यक्ष ताबा देण्याचा हुकूम व्हावा.

क१. सदरील दावा मिळकतीबाबत प्रतिवादी नं. १ व ३ यांच्या तर्फे प्रतिवादी नं. ४ यांनी प्रतिवादी नं.२ यांचे नांवे दि. २६/१२/ २००८ रोजी दावा मिळकतीपैकी गट नं. ५८३ बाबत झालेले खरेदीखत बेकायदेशीर असुन ते वादीवर बंधनकारक नाही. असा ठराव करून मिळावा.

ड. दावा विषयास अनुसरून मा. कोर्टाने योग्य ते हुकूम करावेत. वडगांव मावळ.

**15)** Apparently, only Plaintiff No.1 has filed second amendment application in the year 2017. This is apparent from the fact that only name of Plaintiff No.1 appears in the title of amendment application at Exhibit 70 and the same also bears the thumb impression of Plaintiff No.1 only. Even the present petition is filed only by Plaintiff No.1. Plaintiff No. 2 is impleaded in the present petition as Respondent No. 5 and it is not known whether Plaintiff No.2 is transposed as Defendant in the suit. Be that as it may. By her application dated 27 November 2017, the Petitioner/Plaintiff No.1 sought a comprehensive amendment to the plaint. The first amendment sought is for impleadment of Defendant Nos. 5 and 6 in the plaint. However, the proposed Defendants are not impleaded in the present petition. The impleading parties in the petition are original Defendant No.1, added Defendant Nos. 2 to 4 (by the 2013 amendment) and Plaintiff No.2-Vithabai Haribhai as Respondent No.5. Thus, the parties who are sought to be impleaded by way of amendment vide application at Exhibit 70 are not impleaded in the present petition. This would be the first ground for rejection of the faulty petition as prayer for addition of 2 parties cannot be decided without hearing them.



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**16)** The second amendment sought is in respect of the description of the suit property in paragraph 1(b) and the relevant amendment sought reads thus:

> ३) प्रस्तुत दाव्यातील दावा कलम १ब या मिळकतीचे वर्णनामध्ये नजरचुकीने गट नं. ६१२ असा नमुद करण्यात आलेला आहे. सबब दावा कलम १ब मधील मिळकतीचे वर्णनमध्ये "गट नं. ६१२" हा मजकूर वगळून "गट नं. ६०२" असा समाविष्ट करणेत यावा. तसेच "यांसी क्षेत्र ०५ हे. ७.४ आर" या मजकूरानंतर "पैकी वादी यांचे मालकी व वहिवाटीचे क्षेत्र ०१ हे. ०४ आर ही मिळकत" असा मजकूर समाविष्ट करणेत यावा.

**17)** Thus, the Petitioner now seeks to amend the description of the suit property in paragraph 1(b) by substituting Gat No. 602 for Gat No. 612.

**18)** Thus, Plaintiff No.1 describes the reference to Gat No. 612 in paragraph 1(b) as an inadvertent error. Ordinarily, this Court would have accepted Plaintiff No.1 contention and would have permitted her to amend the plaint to add correct description of the suit property. However, there are multiple reasons why even this amendment cannot be permitted at this stage.

**19)** *Firstly*, in paragraph 1(b) of the plaint, boundaries of Gat No.612 are indicated. On the east side, Gat No.611 and on the west side, Gat No. 613 are reflected in the boundaries. Thus, it clearly appears that the boundaries in paragraph 1(b) of the plaint pertain to Gat No. 612 and not to Gat No. 602. Thus, mentioning of Gat No. 612 does not appear to be a typographical error but a conscious decision to incorporate land bearing Gat No. 612 in the suit. Even in paragraph 3 of the plaint, it is contended that land bearing Gat No. 186/3 + 4 was converted into Gat



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No. 612 under the Consolidation Scheme. This is the first reason why I am not inclined to allow the amendment seeking to modify the description of the land in paragraph 1(b) of the plaint, as no amendment to the boundaries is sought.

**20)** *Secondly* and more importantly, Plaintiffs always believed that the suit is filed in respect of Gat No. 612 and they never intended to file the suit *qua* land bearing Gat No. 602. This is apparent from the fact that the Sale Deed dated 26 December 2008 is executed by Defendant Nos.1 and 4 in favour of Defendant No.2 in respect of two lands bearing Gat Nos. 583 and 602. This is clear from description of the land purchased by Sale Deed dated 26 December 2008 as under:

| अ. क्र | गट नं | क्षेत्र | आकार | चतुःसिमा | | | |
|---|---|---|---|---|---|---|---|
| | | | | पुर्वे | दक्षिणे | पश्चिमे | उत्तरे |
| १ | ५८३ | ०० हे. १४ आर | ० रू. ५४ पैसे | गट नं ५८४ | गट नं ६०० | गट नं ५७६ | मुंबई-पुणे रोड |
| २ | ६०२ | एकूण क्षेत्र ५ हे. ०७.०४ आर पैकी लिहून देणार यांचे क्षेत्र ०० हे. ७४ आर | १८ रू. १८ पैसे | गट नं ६०२ चा उर्वरित भाग | गट नं ६०२ चा उर्वरित भाग | गट नं ६०० | गट नं ५८४ |

**21)** Though the Sale Deed dated 26 December 2008 is in respect of both the lands bearing Gat Nos. 583 and 602, while seeking amendment to challenge the sale deed dated 26 December 2008, Plaintiff consciously omitted to challenge the Sale-Deed qua land bearing Gat No. 602 and consciously restricted its challenge only to land bearing Gat No. 583. This is clear from paragraph 2 of the amendment application dated 26 February 2013 which reads thus:



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> २. सदरील दाव्यात प्रतिवादी नं. २ म्हणुन भरत कांतीलाल अग्रवाल व.व. ४१, धंदा व्यापार, रा. लोनावळा ता. मावळ जि. पुणे प्रतिवादी नं. (३.) हरीष भास्कर घोटे व.व. ३५, धंदा व्यापार रा. मयुर कॉलनी कोथरूड पुणे २९ (४) श्री. महेंद्र मिश्रीमल केरिंग व.व.५६, धंदा व्यापार रा. ११५४, सैप लेन, शॉप नं.२, काईम मार्केट, पुणे ४११००१ याप्रमाणे सदरील दाव्यात दुरूस्ती करून प्रतिवादी म्हणुन सामील करून घेण्यात यावे. तसेच दावा कलम मधील 8 क १ असे लिहुन त्यापुढे पुढील मजकुर लिहिण्यात यावा. सदरील दावा मिळकतीबाबत प्रतिवादी नं. १ व ३ यांच्या तर्फे प्रतिवादो नं.४ यानी प्रतिवादी नं. २ यांच्या नांवे दि. २६/१२/२००८ रोजी दावा मिळकतीपैकी गट नं. ५८३ बाबत झालेले खरेदीखत बेकायदेशीर असून ते वादीवर बंधनकारक नाही. असा ठराव करून मिळावा.
>
> *(emphasis added)*

**22)** Thus, Plaintiffs were conscious of the fact that since the land bearing Gat No. 602 is not the subject matter of the suit, she/they did not include challenge to the Sale Deed dated 26 December 2008 *qua* Gat No. 602 in the amendment application. This is a reason why amended prayer clause 8(c)(i) challenges Sale Deed dated 26 December 2008 only *qua* land bearing Gat No. 583. Thus, Plaintiff was conscious of the fact that Gat No. 602 was not the subject matter of the suit and thus it cannot be contended that there is any inadvertent error in not including Gat No. 602 in description of the suit property.

**23)** As observed above, Plaintiff No.1 has suppressed the fact that she amended the suit in 2013 in the memo of the present petition. This fact has been brought on record by Respondent No. 2 along with the affidavit-in-reply.

**24)** More curiously, though Sale Deed dated 26 December 2008 is already subject matter of challenge in prayer clause 8(c)(i), Plaintiff No.1 has again sought amendment in the plaint for incorporation of prayer clause 8(c)(4):



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८क(४) दावा मिळकतीबाबत प्रतिवादी नं. १, ३, ४ यांनी प्रतिवादी नं. २ यांना लिहून दिलेला बेकायदेशीर करारनामा दस्त नं. १७९७/२००८ दि. ३१/०३/२००८ व खरेदीखत दस्त क. ५५८९/२००८, दि. २६/१२/२००८ हे दोन्हीही दस्त बेकायदेशीर, पोकळीस्त, निरर्थक असून ते रद्द करणेत यावेत.

**25)** Thus, once again, the Sale Deed dated 26 December 2008 is sought to be challenged, despite the fact that it is already subject matter of challenge under prayer clause 8(c)(i).

**26)** Mr. Shah attempts to salvage the position by contending that the amended prayer of 2013 restricted the challenge to the portion of land sold out of Gat No. 583, whereas the challenge now extends to the entire sale deed dated 26 December 2008. However, there is no such averment in the entire application for amendment. The amendment application does not make reference to 2013 amendment. It is nowhere pleaded that Gat No. 602 was inadvertently not ignored in the 2013 amendment while challenging sale deed dated 26 December 2008. This is yet another reason why this Court is not inclined to permit the negligent Petitioner to alter description of the suit property in paragraph 1(b) of the Plaint.

**27)** *Thirdly*, if the list of documents filed along with the suit is perused, what is included in Serial No.3 is 'गट न. ६१२ च्या ७/१२ च्या झेरॉक्स प्रत'. Though Mr. Shah has sought to contended that what is actually filed along with the suit is 7/12 extract of Gat No.602, the certified copy of list of documents filed along with the documents appended thereto clearly indicate that 7/12 extract of Gat No.612 is filed on record. The Petitioner



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has also placed on record a copy of the application dated 24 February 1994, filed by both the Plaintiffs before the Collector, seeking mutation of their names. In the said application, Gat Nos. 583 and 612 are specifically referred to, with a request for deletion of the name of Sindhu Dhote and mutation of their names in its place. Following portion of application dated 24 February 1994 makes it clear.

> पुढे गटवारी योजना लागु करण्यात येऊन गट नंवर ५८३ व गट नंवर ६१२ ला आमचे ऐवजी सिंधु भास्कर धोटे यांचे नांव कब्जेदार सदरी लावण्यात आलेले आहे. सबब या नोंदणी सिंधु भास्कर धोटे यांनी आमच्या जमीनी हडप करण्याच्या हेतुने अशा नोंद करण्यात आल्या आहेत. तरी या बेकायदेशिर नोंद रद्दद करून तुकाराम काटे याचे वारस म्हणुन गट नंबर ५८३ व गट नंबर ६१२ ला कब्जेदार सदरी लावण्यात यावी ही विनंती.

**28)** Thus, even in the pre-suit correspondence, Petitioner has referred to Gat No. 612 and not Gat No. 602. Thus, it is difficult to believe that there is any inadvertent or typographical error in including Gat No.612 in paragraph 1(b) of the plaint.

**29)** The *fourth* reason for disallowing the amendment to the description of the suit property in paragraph 1(b) is creation of valuable rights in favour of third parties in respect of land bearing Gat No. 602 during the pendency of the suit. Various third parties have purchased different portions of land bearing Gat No. 602 by executing sale deeds, having noticed that the said land was not the subject matter of any pending suit. Apart from not including Gat No. 602 in the plaint, Plaintiff No. 1 went a step further and made an unequivocal representation that she was not interested in the land bearing Gat No. 602 by deliberately omitting to challenge the Sale Deed dated 26 December 2008 in respect of the said land. If, at this stage, the Petitioner is permitted to



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incorporate land bearing Gat No. 602 in the suit, the same would fundamentally alter the nature of the suit and also affect the third parties. Several innocent purchasers have purchased various portions of land bearing Gat No.602 through various sale deeds. Plaintiff No.1 cannot now be permitted to include Gat No. 602 and thereby affect the rights of various third parties at this distant point of time. She has been extremely negligent in prosecuting the suit. When she noticed that the sale deed dated 26 December 2008 has been executed in respect of land bearing Gat Nos. 583 and 602, she consciously omitted land bearing Gat No.602 in the amended prayer. Now she wants to turn around and raise a plea that there is a typographical error in describing the suit property as Gat No.612.

**30)** With regard to the proposed amendments concerning the challenge to various sale deeds, it is observed that the Plaintiffs have sought to delete prayer clause 8(c)(1) and substitute it with a new prayer clause 8(c)(1), as under:

> ८) प्रस्तुत दाव्यातील विनंती परिच्छेद नं. ८क (१) मधील संपूर्ण मजकूर कमी करणेत येवून त्याऐवजी खालील विनंती ८क (१) म्हणून समाविष्ट करणेत यावी.
>
> "८क (१) प्रतिवादी नं. १ व ३ यांनी प्रतिवादी नं. ४ यांना दावा मिळकतीबाबत लिहून दिलेले कुलमुखत्यारपत्र दस्त नं. ८६२०/२००६, दि. २/१२/२००६ हा दस्त बेकायदेशीर, पोकळीस्त, निरर्थक असून तो रद्द करणेत यावा."
>
> ९) प्रस्तुत दाव्यातील विनंती परिच्छेद नं. ८क (१) नंतर ८क (२) म्हणून खालील मजकूर समाविष्ट करणेत यावा.
>
> "८क (२) दावा मिळकतीबाबत प्रतिवादी नं. १, ३, ४ यांनी एकमेकांशी संगनमत करून जो खरेदीखत दस्त क. ५३२७/२००६ दि. १५/१२/२००६ रोजी प्रतिवादी नं. ५ यांना लिहून व नोंदवून दिलेला आहे तो बेकायदेशीर, पोकळीस्त, बिनताबा अशा स्वरूपाचा असून तो वादीचे मालकीचे ३० आर क्षेत्रापुरता रद्द करणेत यावा."



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१०) प्रस्तुत दाव्यातील विनंती परिच्छेद नं. ८क (२) नंतर ८क (३) म्हणून खालील मजकूर समाविष्ट करणेत यावा.

"८क (३) प्रतिवादी नं. २ व प्रतिवादी नं. ५ यांनी एकमेकांशी संगनमत करून दावा कलम १ब मध्ये नमुद केलेल्या मिळकतीबाबत प्रतिवादी नं. ६ यांना जो तथाकथित खरेदीखत दस्त क. १३४०/२००७, दि. १५/३/२००७ अनव्ये लिहून व नोंदवून देवून अस्तित्वात आणलेला आहे तो बेकायदेशीर, निरर्थक, पोकळीस्त ठरत असून तो वादीचे मालकीचे क्षेत्रावर बंधनकारक राहणारा नाही असा ठराव करणेत यावा."

११) प्रस्तुत दाव्यातील विनंती परिच्छेद नं. ८क (३) नंतर ८क (४) म्हणून खालील मजकूर समाविष्ट करणेत यावा.

"८क (४) "८क (४) दावा मिळकतीबाबत प्रतिवादी नं. १, ३, ४ यांनी प्रतिवादी नं. २ यांना लिहून दिलेला बेकायदेशीर करारनामा दस्त नं. १७९७/२००८ दि. ३१/०३/२००८ व खरेदीखत दस्त क. ५५८९/२००८, दि. २६/१२/२००८ हे दोन्हीही दस्त बेकायदेशीर, पोकळीस्त, निरर्थक असून ते रद्द करणेत यावेत."

८क (५) दाव्याचा अंतिम न्यायर्णिय हाईपावेतो दावा मिळकतीबाबत प्रतिवादी यांनी स्वतः अथवा त्यांचे नोकर, चाकर, कुलमुखत्यारधारक, अधिकारधारक इ. यांनी कुठलाही दस्त अस्तित्वात आणू नये अथवा दावा मिळकतीमधील वादी यांचे ताब्यास हिल्ला, हरकत करू नये अथवा महसूल दप्तरी फेरबदल करण्यात येवू नयेत अशी निरंतरची मनाई देणेत यावी"

**31)** The Trial Court has held that raising challenges to various documents and sale deeds executed between 2006 and 2008 by filing amendment application on 27 November 2017 is grossly barred by limitation. Mr. Shah has relied on judgment of the Apex Court in ***Shanti Devi*** (supra) in support of his contention that when land owner has not signed/executed document of transfer, it is enough to seek a declaration that the document of transfer does not bind his/her share and that therefore the period of limitation does not apply. In ***Shanti Devi***, the Apex Court has held in paragraphs 32 and 33 as under:

> **32. In *Hussain Ahmed Choudhury* (supra), it was clearly opined that a plaintiff who is not a party to the instrument in question need not seek its cancellation. We are not oblivious to the fact that in a situation where the plaintiff was not a party to the instrument, the said decision laid down a requirement that a declaration must be sought to the effect that the said instrument was not binding on the plaintiff.** However, the said



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> decision clarified that whether the plaintiff has sought such a declaration or not could be culled out from a holistic reading of the plaint along with the relief(s) sought. In cases where the character of the sale deed is assailed as being fraudulent, this requirement is implicitly satisfied since the very averment that the sale deed was fraudulent or a sham and bogus transaction by itself indicates that the plaintiff did not intend to be bound by it. Therefore, this requirement too, could be said to have been satisfied by the plaintiff in the present case.
>
> **33.** Further, as per *State of Maharashtra* (supra), it would be of no consequence even the plaintiff in one of his prayers, seeks a declaration that the sale deed is a nullity or invalid insofar as he is concerned, since such an instrument would anyway be void owing to it being fraudulent. Therefore, the period of limitation for a suit for possession based on title would continue to be governed by Article 65. In other words, the addition of such a prayer would not influence the period of limitation within which such a suit must be filed.
>
> *(emphasis added)*

**32)** In my view, however the judgment of the Apex Court in ***Shanti Devi*** is clearly distinguishable and does not apply to the facts of the present case. In case before the Apex Court, Plaintiff therein had filed a suit for permanent injunction to restrain the Defendant from interfering with their peaceful possession to the extent of one-third share in the agricultural land. In the alternative, Plaintiffs prayed that they be put in joint possession of the suit property along with the Defendants. Thus, the suit did not seek a declaration that Plaintiff therein are owners in respect of the suit property. The suit was filed by the joint owner against another joint owner for possession of one third share in the suit property. In such situation, when it was found that the other joint owner had executed instrument of transfer, the Apex Court has held that since Plaintiff did not sign or execute any instrument of title, they could simply seek a declaration that such instrument of transfer does not bind their share and for seeking that declaration



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limitation prescribed under Article 59 of the Limitation Act does not apply. In the present case, however Plaintiffs are not admitted owners of the suit property. They have sought a declaration that they are true owners of the suit property. Defendant No.1 has not admitted title of Plaintiffs in respect of the suit properties. Even though alternate plea of adverse possession is raised, Defendant No.1 has also raised a plea that she has purchased the suit property from husband of Plaintiff. No1. Thus, Plaintiff needs to secure a declaration of ownership in respect of the suit properties. Secondly, the Plaintiffs have not restricted their amended prayers to a declaration that the challenged instruments do not bind their shares. The present case does not involve joint ownership of the suit property by the Plaintiffs and Defendant No. 1, nor does it concern the alienation by Defendant No. 1 of the Plaintiffs' share in the suit property. The ratio of the judgment of the Apex Court in ***Shanti Devi*** may apply to a case where joint owner alienates share of another joint owner and where the aggrieved joint owner seeks a declaration that the alienation does not affect his share. In the present case, however, there is neither joint ownership nor a declaration can be sought that instrument of transfer does not bind the Plaintiffs. Plaintiffs claim ownership of whole of the land by seeking a declaration that Defendant No. 1 had no right, title or interest in the suit property. Therefore, the Plaintiffs have sought a declaration that the sale deeds are void ab initio and liable to be set aside. The relief sought is not limited to a declaration that the alienations are not binding on their respective shares. This is because the Plaintiffs claim ownership of the entire suit property, and therefore, no question of shares in the suit property arises. In my view therefore



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the ratio of the judgment of the Apex Court in ***Shanti Devi*** can have no application to the facts of the present case.

**33)** In ***Life Insurance Corporation of India V/s. Sanjeev Builders Private Limited and Another***[5], the Apex Court has expressly held that where the proposed prayer in amendment application is *ex-facie* barred by limitation the Court would be justified in refusing to permit such amendment. The Apex Court held thus:

> 71.3.2. To avoid multiplicity of proceedings, provided
>
> (a) the amendment does not result in injustice to the other side,
>
> (b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and
>
> (c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

**34)** This Court is satisfied that the prayers sought to be incorporated challenging various documents and deeds executed between the years 2006 and 2008 are hopelessly barred by limitation and could not have been permitted to be incorporated by allowing the amendment application filed in the year 2017.

**35)** Even if the aspect of limitation is to be momentarily ignored, there are other better reasons for rejecting the amendment as discussed above. Once the Plaintiffs are not permitted to amend the description of the suit property to include land bearing Gat No. 602 in its

5 2022 SCC OnLine SC 1128.



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ambit, the proposed amendments challenging the sale deeds qua land bearing Gat No. 602 automatically become infructuous. If the land bearing Gat No. 602 is not the subject matter of suit, there is no point in allowing amendments for challenging the various sale deeds.

**36)** Another facet in this regard is Plaintiff's action of selectively challenging only sale deed dated 26 December 2008 by filing application for amendment dated 26 February 2013. As observed above, filing of the said amendment application is suppressed in the present petition. If Plaintiffs could challenge sale deed of 26 December 2008 by filing amendment application on 26 February 2013, why they did not challenge rest of the sale deeds and documents executed contemporaneously is beyond comprehension. This again depicts gross negligence on the part of the Plaintiffs in prosecuting the suit. The amendment therefore does not appear to be bonafide.

**37)** In ***Life Insurance Corporation of India V/s. Sanjeev Builders Private Limited*** (supra), the Apex Court has also held that if the proposed amendment is found to be malafide, the Court can reject the same. In the present case, there is some material to infer that Plaintiff always intended to claim ownership and possession *qua* land bearing Gat No. 612. Before filing the suit, both the Plaintiffs filed application dated 24 February 1994 for removal of name of Defendant No.1 and for inclusion of their names qua Gat No. 612. Along with the plaint, they have filed 7/12 extract of Gat No. 612 which includes name of Sindhu Bhaskar Dhote. Thus, Plaintiff always intended to claim rights in Gat No. 612. When Plaintiffs realised that the sale deed dated 26 December 2008



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also pertained to Gat No. 602, they consciously omitted to challenge the said sale deed and restricted their challenge to the sale deed pertaining to Gat No. 583 alone. It appears that only after the Plaintiff No.1 realized that the third parties had purchased portions of land in Gat No. 602, she apparently decided to embroil land bearing Gat No. 602 in the pending suit possibly with an intention of bringing the purchasers to compromise/negotiations. This is one of the reasons why this Court is unable to record a finding that the proposed amendment seeking to modify the description of the suit property in paragraph 1(b) is not a bonafide exercise. Therefore, even on the ground that the proposed amendment is not bonafide, the same deserves to be rejected.

**38)** Mr. Shah has contended that if Plaintiff is found to be negligent in not applying for timely amendment, equities could have been balanced by imposition of costs instead of rejecting the application for amendment altogether. He has relied on judgment of the Apex Court in ***Surendra Kumar Sharma*.** In my view, however, when the amendment is totally time barred and not bonafide there is no question of allowing the same by imposition of costs.

**39)** It must also be borne in mind that this is the second amendment application in a suit which is pending since the year 1995. Even if the proposed amendments are allowed, the same is not going to stop further amendments. As observed above, Plaintiffs will have to seek amendment in boundaries of the suit property. The suit is pending for the last 31 long years and it appears that the intention of Plaintiff No. 1 appears to be to keep the Defendants and proposed Defendants engulfed



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in endless litigation so that they finally come at the negotiation table. Though the proviso to Order 6 Rule 17 was introduced by CPC (Amendment) Act, 2002, the same does not mean that the Plaintiff in a pre-2002 suit can amend the plaint at any point of time.

**40)** Considering the overall conspectus of the case, I am of the view that no interference is warranted in the impugned order passed by the Trial Court rejecting the amendment application. The Petition is accordingly **dismissed** without any order as to costs. Pending Interim Application if any disposed of.

**[SANDEEP V. MARNE , J.]**

NEETA SHAILESH SAWANT

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