

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2511 OF 2014

Shri Bhimraj Sadashiv Karpe,
Age: 62 years, Occu. Agri.,
R/o Takalimiyan,
Tq-Rahuri Dist-Ahmednagar

...PETITIONER

VERSUS

- 1) Fakirnath Sadashiv Karpe,
Age: 70 years, Occu. Agri.
- 2) Dewram Sadashiw Karpe,
Age: 65 years, Occu. - Agri.,
- 3) Bharat Sadashiv Karpe,
Age: 60 years, Occu. - Agri.,
Resp. no. 1 to 3 R/o Takalimiyan,
Tq-Rahuri, Dist – Ahmednagar
- 4) Sitabai Dadapatil Harde,
Since deceased through L.Rs.
- 4A) Suryabhan Dada Harde,
Age: 45 years, Occ – Agri.,
R/o – Takalimiya,
Tq. : Rahuri, Dist- Ahmednagar
- 4B) Chandrakala Kundlik Musmode,
Age: 40 years, Occ – Agri.,
R/o – Tambhere, Tq- Rahuri,
Dist. Ahmednagar
- 5) Kesharbai Lauxman Musmode,
Age: 60 years, Occu – Agri,
R/o – Tambher, Tq. Rahuri,
Dist. - Ahmednagar

- 6) Shakuntala Ramnath Nehe,
Age: 52 years, Occ: Agri.,
R/o – Kharwandi, Tq. : Newasa,
Ahmednagar
- 7) Vachalabai Makaji Bhaldand,
Since deceased through L.Rs.
- 7A) Chandrabhan Makaji Bhaldand,
Age- 45 years, Occ: Agri.
- 7B) Balasaheb Makaji Bhaldand,
Age- 40 years, Occ-Agri.
- 7C) Nivrutti Makaji Bhaldand,
Age: 35 years, Occ: Agri.
- 7D) Kusum Tanaji Harde,
Age:-30 yers Occ – Household,
R/o Taharabad, Tq. Rahuri,
Dist Ahmednagar
- 7E) Nanda Bhaousaheb Kudle,
Age: 25 years, Occ : Household,
R/o Pimpalas, Tq- Rahata,
Dist – Ahmednagar
- 7F) Makaji Shridhar Bhaldnad,
Age:75 years, Occ – Agri.,
Resp No 7 A, B,C & F are
R/o Undirgaon, Tq-Shrirampur,
District - Ahmednagar

...RESPONDENTS

Mr P.V. Barde, Advocate for petitioner;
Mr G.D. Tanpure, Advocate for respondents no.1 to 3

CORAM : N.W. SAMBRE, J.**DATE : 20th January, 2015****ORAL ORDER**

By the instant writ petition, the petitioner/original plaintiff seeks to challenge the order dated 20th December, 2013, passed by Civil Judge Senior Division, Rahuri, below Exh.45, in Regular Civil Suit No.35 of 2008, whereby application for amendment of plaint made by him under Order VI, Rule 17 of the Code of Civil Procedure, came to be rejected.

2. The petitioner/plaintiff moved an application Exh.45 for amendment of plaint during the course of recording of evidence of defendants in a suit for partition and separate possession, on the ground that the legal representatives of one of the sisters, namely, Vachhalabai, who expired sometime in 2006, were not impleaded as parties to the suit. The said application came to be rejected on the ground that death of Vachhalabai was brought to the notice of the present petitioner by virtue of written statement filed by the respondents on 11th July, 2008. According to the Trial Court, the petitioner/plaintiff was negligent in pursuing the said issue before the Court and as such, since the trial in the suit has already begun, the application came to be rejected.

3. Mr Barde, learned Counsel appearing on behalf of the petitioner/plaintiff submits that the suit is for partition and separate possession, in which the parties to the suit are termed to be claimants/applicants. He further submits that the fact that Vachhalabai expired in 2006 was not within knowledge at the time of filing of the suit.

He further urged that though the said fact was brought to the notice of the plaintiff by virtue of written statement dated 11th July, 2008, because of inadvertence the said party remained to be added to the suit. He submits that in a suit for partition, the legal representatives of said Vachhalabai are necessary parties. According to him, if the amendment is permitted, no prejudice will be caused to the defendants.

4. Learned Counsel appearing on behalf of respondents/defendants no.1 to 3 submits that the learned Trial Court has rightly rejected the application as the same was moved at belated stage as the suit was fixed for recording of the evidence and the trial in the suit has already commenced. He further submits that way back in 2008, the fact about death of sister Vachhalabai, was well within the knowledge of the petitioner. According to him, the application is rightly rejected by the Court below.

5. Having considered rival contentions of the parties, it is noticed that the fact about the death of Vachhalabai is not in dispute. It is also not in dispute that her legal representatives are entitled for the claim in the suit for partition and separate possession. Just because the application is moved at belated stage, that does not dis-entitle the said legal representatives for claiming any right in the suit property and it will not be appropriate to reject the same in a suit for partition.

6. I am fortified in my above view by the law laid down by this Court in the matter of **Sumitra Anna Aware & ors. vs. Anusaya Rajaram Aware & ors.**, reported in **2012 (3) ALL MR 916**. Paragraphs 10 and 14 of the said decision are worth referring, which read thus :-

“10. Before proceeding further in recording a finding on the said substantial questions of law, it is required to be noted that the three sisters of the Plaintiff Anna Aware have filed Civil application 1646 of 2010 for being impleaded in the above Appeal. It has been averred in the Civil Application in Para 4 thereof that the Applicants do not claim any share in respect of the suit property and whatever share to which the applicants are entitled to may be given to the Appellants i.e. the legal heirs of the deceased Anna Aware. It is further stated that the applicants are not interested in any share which may be available to deceased Anna and that if the applicants are joined as party Defendants-Respondents in the present suit, no prejudice would be caused to the Respondents.

The said Civil Application is opposed by the Appellants herein by filing an affidavit in reply. It is contended that though the proceedings in the Courts below were pending since last about more than 20 years, no efforts were made either by the plaintiffs or the said three persons to implead themselves as parties in the suit. It is further contended that the joining of the said three persons, at this stage would create complications and that the same would have effect on the decree that would have to be passed. In my view, the objections raised on behalf of the Appellants herein to the Civil Application filed by the said three sisters is without any substance. It is trite that in terms of Order 1 Rule 10(2) of the Code, the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that name of any person whose presence before the Court is

necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit, be added. The Court, therefore, as can be seen, is sufficiently seized with the powers to add a party to the suit if the presence of the said party is necessary to effectively adjudicate the lis between the parties and pass effective decree.

14. In support of his contention, the learned counsel for the Respondent no.1 placed reliance on the judgment of the Apex Court in the case of Kenchegowda (Since deceased) By legal Representatives Vs. Siddegowda Alias Motegowda, reported in (1994) 4 Supreme Court Cases 294, wherein the Apex Court has held that the Suit for partial partition, when all the joint family properties are not made subject matter of the suit nor the co-sharers impleaded, is not maintainable.”

7. In the light of above, the order impugned herein is not sustainable. I, therefore, pass the following order :-

The order dated 20th December, 2013, passed by Civil Judge Senior Division, Rahuri, below Exh.45, in Regular Civil Suit No.35 of 2008, is quashed and set aside.

The application Exh.45, seeking amendment of plaint, stands allowed. As the petitioner/plaintiff was negligent in pursuing the said issue, he shall pay costs of Rs.5,000/- to the defendants. The amount of costs shall be deposited in the Trial Court within a period of three weeks from today. The payment of costs shall be condition precedent.

(7)

wp2511.14.

The respondents/defendants are at liberty to carry out appropriate amendment in the written statement, to the extent of the amendment granted in favour of the petitioner/plaintiff.

Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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