

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.2140 OF 2013

Ramchandra s/o Bhaga Kharat,
Age 48 years, Occu. Agri.,
R/o Pokhari Baleshwar
Taluka Sangamner,
District Ahmednagar.

..Petitioner

Versus

1. Bhaga Sakharam Karat,
(deceased), through L.Rs.
- 1-A Sakhubai Keru Vairal,
Age 46 years, Occu. Agri.,
R/o Warudi Pathar,
Taluka Sangamner,
Dist. Ahmednagar
- 1-B Parvatabai Narayan Wagh,
Age 43 years, Occu. Agri.,
R/o Saikhindi, Taluka Sangamner,
District Ahmednagar
- 1-C Chandrakala Sudam Misal,
Age 41 years, Occu. Agri.,
R/o Premgiri, Taluka Sangamner,
District Ahmednagar
- 1-D Indubai Dagadu Tapal,
Age 39 years, Occu. Agri.,
R/o Premgiri, Taluka Sangamner,
District Ahmednagar
- 1-E Sundarbai Balu Rupwate,
Age 35 years, Occu. Agri.,
R/o Khandgaon, Taluka Sangamner,
District Ahmednagar
2. Sudam Kondaji Misal,
Age 41 years, Occu. Agri.,
R/o Hivargaon Pathar,
Taluka Sangamner,
District Ahmednagar
3. Sau. Chhaya Bhausahab Kharat,
Age 35 years, Occu. Agri.,
R/o Maldad road, Sangamner,
Taluka Sangamner,
District Ahmednagar

5. Manohar Shabaji Kharat,
Age 52 years, Occu. Agri.,
R/o Pokhari Haveli Baleshwar,
Taluka Sangamner,
District Ahmednagar
 6. Ramnath Mahadu Fatangare
(since deceased) through his
L.Rs.
 - 6-A Bhausahab s/o Ramnath
Fatangare, Age 51 years,
Occupation Agriculture
 - 6-B Rambhau Ramnath Fatangare,
Age 46 years, Occu.Agri.,
 - 6-C Raosaheb Ramnath Fatangare,
Age 41 years, Occu.Agri.,
 - 6-D Parvatabai Bhausahab Jadhav,
Age 48 years, Occu. Agri.,
 - 6-E Nandabai Sudam Jadhav,
Age 36 years, Occu. Agri.,

Respondent Nos.6-A to 6-E
R/o Pokhari Baleshwar,
Taluka Sangamner,
District Ahmednagar
 7. Kausabai Bhaga Kharat,
Age 66 years, Occu. Agri.,
R/o Pokhari Baleshwar,
Taluka Sangamner,
District Ahmednagar
- .. Respondents

Mr R.L. Kute, Advocate for petitioner
 Mr A.T. Kanawade for respondents No.1-A to 1-E, 2 & 7
 Mr K.M. Nagarkar, Advocate h/f Mr R.S. Shejule, Advocate for
 respondents No.3, 4, 6-A to 6-E

CORAM : N.W. SAMBRE, J.

DATE : 2nd December 2015

PER COURT

Heard.

2. The petitioner, plaintiff in Special Civil Suit No.222 of 1997 claimed relief of declaration that he is adopted son of defendant No.1 and the sale deeds executed, as are mentioned in the plaint are not binding on him and sought further declaration that being adopted son of defendant No.1 he is owner of suit property.

3. The suit is fixed for recording evidence of the plaintiff at which stage he moved an application seeking amendment to the plaint and sought to add that the adoption, as is claimed by him is permissible in accordance with customs and traits as are followed in his community.

4. The said application is rejected by learned Joint Civil Judge, Senior Division, Sangamner trial Court vide order dated 22nd February 2013, as such present petition.

5. Learned Counsel for the petitioner, while trying to make out case for grant of amendment would urge that the amendment sought to be incorporated does not change the nature of claim in the suit, as he intend to add pleadings in support of his case for adoption, by incorporating that his adoption was by customary method, as is permissible in the respective religion/castes.

6. He would then urge that the said amendment, if granted won't change the nature of the suit as basic pleadings are already incorporated in the plaint and he submits that the petitioner be put to certain conditions, which this Court deems fit for granting amendment.

7. The prayer for amendment is opposed, including the petition by the learned Counsel for the respondent on the ground that the suit was already time and again amended. The application for amendment is moved at a belated stage, i.e. after a period of fifteen years of filing of the suit. No explanation is coming forward for delayed prayer for amendment and in view of provisions of Order VI, Rule 17 of Code of Civil Procedure, particularly proviso, the amendment should not be granted, as the recording of evidence of plaintiff has commenced.

8. With the assistance, I have perused the prayer in the plaint and other pleadings and the nature of amendment, that is sought by virtue of Exh.145 to the plaint. It is required to be noted that the petitioner has already pleaded a case for declaration that he is adopted son of defendant No.1. Once the basic pleadings are there, addition of pleading as sought by way of amendment that adoption by way of customs and traits, in my opinion, hardly changes the nature of claim irrespective of earlier claim of statutory adoption. As the burden is on the plaintiff to prove his adoption, he has every right to claim adoption either by way of statutory provisions or through customary nature for which basic pleadings could be noted in the plaint. The respondents will not be taken by surprise if the said amendment is to be granted.

9. Apart from above, it is required to be noted that recording of evidence of plaintiff is in progress and as such, the trial has not reached at an advanced stage. As such, in my opinion, no prejudice will be caused in case the amendment, as prayed is granted.

10. In my opinion, the grant of amendment hardly will cause any prejudice to the defendants, however, it will be worth to direct the petitioner to pay costs of Rs.10,000/- to be deposited before the Court below within a period of two weeks from today, which the defendants No.1-A to 1-E, 2, 3, 4, 6-A to 6-E and 7 will be entitled to withdraw in equal share.

11. With above observations, Writ Petition stands allowed. The application Exh.145 stands granted and the order dated 22nd February 2013 rejecting the said application for amendment is set aside.

12. As the suit is of 1997, hearing thereof is expedited.

(N.W. SAMBRE, J.)

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