

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 6446 OF 2014

SAKHUBAI HIRALAL MISHRA
VERSUS
BHAU BABU WAGHMARE AND OTHERS

Advocate for Petitioner : P.S.Koshti h/f Shaikh Shoyab
Advocate for Respondents : N.T.Tribhuvan h/f Suryawanshi
Prashant D. For R/1, 3 To 5

CORAM : N.W.SAMBRE,J.
DATED : 16TH DECEMBER,2015

PER COURT :-

Regular Civil Suit No.17/2005 for partition and separate possession came to be compromised.

2] The petitioner thereafter filed Regular Civil Suit No.476/09 for setting aside compromise decree passed in Regular Civil Suit No.17/05 and sought partition and separate possession.

3] In the said Suit, application Exh.57 came to be moved by defendants respondent for amendment of the written statement raising a ground about non joinder of necessary parties which came to be allowed by an order dated 5/3/2014, as such this Petition.

4] The learned counsel for the petitioner would strenuously urge that once the trial in the Suit has commenced, it is not open for the defendant to amend the written statement, He has relied upon provisions of Order 6 Rule 17 and Order 8 Rule 1 of CPC. In addition, he would urge that if by permitting the amendment the learned trial Court has given premium in favour of the respondent

defendant of raising inconsistent stand to that of which he had taken earlier in R.C.S.17/05 wherein the partition was admitted by them.

5] The prayer is opposed by learned counsel for the respondents on the ground that amendment to the written statement is required to be dealt with properly, the trial Court was right in granting the same. He would then urge that no prejudice will be caused to the petitioner/plaintiff.

6] Having considered rival submissions it is noticed that amendment is sought in the written statement after recording of evidence of plaintiff.

7] It is equally true that the amendment is sought after commencement of trial, however this Court may take note of the fact of trial having not reached at advance stage and the amendment to the written statement is required to be considered and granted liberally.

8] In my opinion, grant of amendment as ordered by impugned order as such does not call for any interference as point of law of non joinder of necessary party is sought to be canvassed.

9] In view of above background, and the stage at which amendment application is moved, cost as ordered by trial Court is enhanced from Rs.300/- to Rs.1500/- to be deposited before trial Court within three weeks from today to which the petitioner will be entitled to withdraw. Petition stands dismissed in above terms.

(N.W.SAMBRE,J.)

umg/