

**N THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6491 OF 2015

Govind Rama Yedale,
Age: 60 years, Occup. Agril,
R/o Gharani, Tal. Chakur,
Dist. Latur, presently residing at
Shambhunagar, Near Rajiv Gandhi
School, M.I.D. Latur.

...PETITIONER
(Ori. deft. No. 1)

versus

1. Sau Shivkanaya W/o Vyankatrao Khase,
Age: 48 years, Occu. household,
r/o Janwal, Tal. Chakur, Dist. Latur. (Ori. plaintiff)
2. Murlidhar Rama Yedale,
Age: 58 years, Occ: agril.,
r/o Gharani, Tal: Chakur,
Dist.: Latur. (Ori. deft. No. 2)
...RESPONDENTS

.....
Mr. V.D. Gunale, Advocate for Petitioner
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 6th July, 2015

Order :-

1. Heard learned counsel for petitioner.
2. Petition has been moved by petitioner - original defendant No. 1 aggrieved by order dated 31-03-2015, on Exhibit-55 in Regular Civil Suit No. 141 of 2012, passed by joint civil judge, junior division, Chakur, letting the respondent No. 1 -plaintiff to amend the plaint.
3. The suit has been instituted by present respondent No. 1 seeking partition and separate possession of various properties referred to in the plaint. Petitioner had filed written statement opposing claim of

respondent No. 1, *inter-alia*, pointing out that suit is bad for non joinder of necessary parties. Subsequently, issues came to be framed in the month of March, 2014. Afterwards, application Exhibit – 55 was moved by respondent No. 1 for amendment, which has been allowed and, as such, the petitioner-defendant is before this court.

4. Mr. Gunale, learned counsel vehemently submits that learned Judge has observed that the plaintiff had not taken proper care at the time when she filed present suit, however, under apprehension that it may give rise to multiplicity of proceedings, application has been granted. He contends that the very nature of the suit would undergo change. He submits that having regard to observations, application ought to have been rejected since issues have been already framed and as such trial had already commenced. With reference to proviso to Order VI, Rule 17 of the Code of Civil Procedure learned counsel submits that for want of due diligence, amendment application ought not to have been considered. It is being contended that certain properties are self-acquired properties of the petitioner, which are sought to be included in the plaint by proposed amendment.

5. If the issues are framed, it would hardly possible to say that trial has commenced. Amendment applications are generally to be considered liberally. The impugned order is discretionary order passed by the trial court. There is no dispute that suit is for partition and separate possession. It is open for the petitioner to defend his case in respect of amendments by filing amended written statement, if he so desires.

6. I am not inclined to interfere with and it cannot be said to be perverse. Writ Petition, as such, is not being entertained and stands rejected.

(SUNIL P. DESHMUKH, J.)

MTK