

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

WRIT PETITION NO.4473 OF 2015

Ananda s/o Maroti Jadhav,
Age: 41 years, Occu: Agril.,
R/o Dugaon, Tq. Biloli,
Dist. Nanded

...Petitioner

Versus

Sow. Nirmalabai w/o Govindrao Jadhav & ors. ...Respondents

.....

Mr. U. B. Bilolikar, Advocate for petitioner
Mr. S H. Panchal, Advocate h/f Mr. D. R. Gaikwad, Advocate for
respondent No. 1

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CORAM : N.W. SAMBRE, J.

DATE : 22nd December, 2015

ORAL ORDER :

Plaintiff filed suit for partition and separate possession vide Regular Civil Suit No. 49 of 2012 to which, application for amendment of written statement came to be moved by petitioner-defendant, which application came to be rejected by the learned trial Court vide order below Exhibit-108 passed on 24/03/2015, as such, present writ petition.

2. Learned Counsel for petitioner would urge that amendment to written statement is required to be considered and

dealt with liberally as compared to that of amendment in the plaint. According to him, the Apex Court in catena of judgments has already taken a view that it is always open to the applicant to take inconsistent pleas in the matter of defence. He would then urge that, the basic foundation about the issue raised qua amendment in the written statement was very much pleaded originally in written statement, however, so as to further amplify and to give entire details, the application for amendment came to be moved. According to him, in absence of basic foundation, he is not in a position to lead secondary evidence in the matter and as such, prayed for allowing the application for amendment by setting aside the order below Exhibit-108.

3. Learned Counsel for the respondent No. 1/plaintiff would urge that in the light of plea that was raised in the written statement, the petitioner has moved an application Exhibit-101 for permission to lead secondary evidence pursuant to provisions of Sections 63 and 65 of the Act. He would then urge that, once the said application is granted, the petitioner will be permitted to lead secondary evidence in support of sale instance. According to him, the said secondary evidence will be evaluated by learned trial Court at the stage of deciding the suit, and as such, it is premature for the petitioner to say that the amendment so as to amplify his defence needs to be granted.

4. Having considered the rival submissions, it is not in dispute that, Exhibit-101, an application for permissible to lead secondary evidence is already allowed by learned trial Court, as consequences whereof the defence of sale deed as is raised will be considered by learned trial Court based on secondary evidence that will be brought on record. Learned Counsel for the plaintiff/respondent No. 1 was right in pointing out that they will not be objecting to this order permitting the petitioner to lead secondary evidence. Apart from above, the issue as regards sufficient pleadings in support of existence of sale deed, appreciation of secondary evidence in support of such sale deed will be an issue since to be gone into at the stage of final decision of the suit, it is really premature for the petitioner to say that if the amendment is not granted, his defence might get weak. In this background, in my opinion, no fruitful purpose will be served by granting amendment. As such, the petition fails, stands dismissed.

[N.W. SAMBRE, J.]