

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

WRIT PETITION NO. 6162 OF 2014

1. Chhabubai w/o Shridhar Aandhale,
Age: 59 years, Occ: Agriculture,
2. Sangita d/o Shridhar Aandhale,
Age: 38 years, Occ: Agriculture & Service,
Both R/o. Near Kokare Mandap,
Chinchwad Pune No.19, Dist. Pune. ...Petitioners

versus

1. Hansraj s/o Paraji Aandhale,
Age: 54 years, Occ: Agriculture,
2. Dinkar s/o Paraji Aandhale,
Age: 49 years, Occ: Agriculture,
3. Chhabubai Hansraj Aandhale,
Age: 49 years, Occ: Agriculture,
4. Gangubai Dinakr Aandhale,
Age: 43 years, Occ: Agriculture,

All R/o. Soansangvi, Tq. Shevgaon,
District Ahmednagar.
5. Viju Shridhar Aandhale,
Age: 41 years, Occ: Agriculture,
R/o. A/p. Nerli Tamgaon, Tq. Karvi,
Dist. Kolhapur. ...Respondents

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Mr. Ajay Shinde, Advocate for petitioners.
Mr. Y.V. Kakade, Advocate for respondent Nos. 2 to 4.
Respondent Nos. 1 & 5 : served.

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CORAM : N.W. SAMBRE, J.

DATE : 25TH FEBRUARY, 2015

ORAL ORDER :

. The order passed below Exhibit-59-an application for amendment of the plaint in Regular Civil Suit No. 170 of 2010-the suit for partition, whereby the prayer of amendment of the plaint is rejected by 2nd Joint Civil Judge, Junior Division, Shevgaon on 05/02/2014, is the subject matter of the petition.

2. Learned Counsel for the petitioners submits that though issues in the suit for partition are framed, however, the petitioners-plaintiffs moved amendment application, which is rejected by the order impugned on the ground that the same is hit by Article 137 of the Limitation Act, as the application for amendment was not filed within limitation. He submits that in the suit for partition, the parties to the suit are co-plaintiffs and if the amendment is granted, no prejudice will be caused to the present respondents, who are the defendants, rather the amendment sought for is in aid of the parties for reaching to an appropriate decision. He submits that it is necessary to grant amendment so as to have appropriate adjudication of the rights of the parties.

3. Learned Counsel for the respondents, while opposing

the above referred request, has invited my attention to Article 137 of the Limitation Act. He submits that in the present case, the suit was filed in 2010 and written statement was filed on 02/12/2010 and as such, the application should have been filed immediately thereafter in the light of provisions of Article 137 of the Limitation Act. He submits that since the application is moved after a period of three years, same is rightly held to be not tenable.

4. Having considered the rival contentions of the parties and having given thoughtful consideration, having gone through the reasons cited by learned trial Court, it is required to be noted that though issues in the suit are framed, however, the plaintiff has not filed her examination in chief in the matter, as such, prejudice if any, because of grant of amendment to the plaint, is not taken into account by the trial Court while rejecting the application.

5. One more angle to the present matter is, in a suit for partition as is rightly claimed by the petitioners, the parties are co-plaintiffs and the appropriate parties to the suit and details of the property are required to be put forth in proper manner so as to have appropriate adjudication of the issues raised therein.

6. In my opinion, the amendment sought for goes to the

root of the matter and is necessary for proper adjudication of the claim set up in the suit, which is for partition. In view of above, the impugned order 05/02/2014 is not sustainable and liable to be set aside. As such, the order dated 05/02/2014 passed below Exhibit-59 in Regular Civil Suit No. 170 of 2010 by 2nd Joint Civil Judge, Junior Division, Shevgaon is hereby set aside.

7. The application Exhibit-59 for amendment to the plaint stands granted, subject to payment of costs of Rs. 3000/- (Rs. Three thousand). Each defendant is entitled to withdraw cost of Rs. 1000/- (Rs. One Thousand), after depositing the same by the petitioners before the trial Court, within a period of four weeks from today. Payment of cost is a condition precedent.

8. The writ petition is allowed, in above terms.

[N.W. SAMBRE, J.]