

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6105 OF 2013

Miss. Sapna D/o Abaji Puyad,
Age : 5 years (Minor), under the
guardianship of Grandfather
Purbhaji s/o Dattaram Kadam,
Age : 72 years, Occu.Agril.,
R/o Wadi Puyad, Tq. & Dist.
Nanded

..PETITIONER

VERSUS

Abaji s/o Phulaji Puyad,
Age : 37 years, Occu.Agril.,
R/o Wadi Puyad, Tq. & Dist.
Nanded

..RESPONDENTS

Mr Amit A. Mukhedkar, Advocate for petitioner;
Mr G.R. Syed, Advocate holding for Mr G.P. Shinde, Advocate for
respondent

CORAM : N.W. SAMBRE, J.

DATE : 20th January, 2015

ORAL ORDER

The plaintiff is the minor daughter of the defendant, who instituted Regular Civil Suit No.250 of 2011, for partition and separate possession in relation to the properties mentioned in the plaint.

2. Before commencement of the trial in the suit, application Exh.27 came to be moved by the petitioner/plaintiff for amendment of plaint,

seeking certain clarification as regards source for acquisition of the ancestral property. It is not disputed that in the plaint already there are pleadings that the suit properties are ancestral properties.

3. Upon hearing the parties, the learned 6th Joint Civil Judge Junior Division, Nanded has rejected application Exh.27 on the ground that the amendment sought for if allowed, will change the nature of the pleadings.

4. Learned Counsel appearing on behalf of the respondent/defendant has opposed the instant petition. According to him, the amendment sought for is as a consequence of the defence raised by the present respondent. According to him, by moving the amendment application the petitioner has sought to change the nature of pleadings, the amendment application has rightly been rejected by the learned Trial Court. According to him, the instant petition being devoid of substance deserves to be dismissed.

5. At the outset, I must observe that in a suit for partition, the plaintiff to the suit is required to be treated as applicant. The petitioner/plaintiff has come out with a specific stand that the suit properties are ancestral properties. What is sought to be inserted by way of the amendment is a clarification that the part of suit properties were acquired from out of the income received from few of the suit properties. In my opinion, by

inserting the same pleadings, the defendant will not be taken by surprise and in any case, would not change the stand in the suit, that the suit properties are ancestral properties. As said amendment is necessary for deciding the real question raised in the suit, the amendment is required to be granted.

6. In that view of the matter, the order impugned herein is not sustainable and same stands quashed and set aside.

The application Exh.27 stands allowed.

Writ Petition stands allowed in above terms with no order as to costs.

(N.W. SAMBRE, J.)

amj