

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

WRIT PETITION NO.6770 OF 2014

Dropadabai w/o Trimbak Nawale,
Age 56 years, Occu. Agriculture,
R/o Bangali Pimpala, Taluka Georai,
District Beed

.. Petitioner
(Orig.Plaintiff)

Versus

Tatyasaheb s/o Trimbak Nawale,
Age 28 years, Occu. Agriculture,
R/o Bangali Pimpala, Taluka Georai,
District Beed

.. Respondent
(Orig.Defendant)

Mr V.P. Savant, Advocate for petitioner
Mr D.G.Nagode, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 24th February 2015

PER COURT

1. The learned 2nd Joint Civil Judge, Junior Division, Georai rejected the application Exh.102 in Regular Civil Suit No.183 of 2008, preferred under Order VI, Rule 17 of the Code of Civil Procedure by the order impugned dated 20th June 2014, as the suit for partition initiated by the mother against her son has reached at a concluding stage, i.e. at the stage of final hearing.

2. The learned Counsel for the petitioner – plaintiff invited my attention to the very pleadings raised in the application for amendment. He submits that the amendment that is sought to be incorporated in plaint is for amplifying proper description of the suit property and nothing new is sought to be incorporated. He further

urged that after grant of amendment, the plaintiff is not intending to lead any additional evidence in support of the amendment. According to him, even if the suit has reached at the stage of final hearing, no prejudice would be caused to the defendant as the pleadings by amendment will not surprise the defendant, who is son of the plaintiff. He submits that the plaintiff is ready to pay costs to defendant.

3. The defendant has resisted the present writ petition and supported the order passed by the trial Court on the ground that the cause cited for the amendment is not genuine one. According to him, the trial in the suit once has begun, it will not be appropriate to grant amendment, much less the amendment which is sought for by the plaintiff. He further urged that the above referred act on the part of the petitioner – plaintiff shall delay the further proceedings in the suit.

4. Having considered the rival contentions of the parties, one cannot lose sight of the fact that in an unfortunate legal proceedings before this Court, the mother is fighting for her right against her son by filing suit for partition and separate possession wherein the son – defendant has raised a plea of relinquishment of the property by the plaintiff.

5. Be that as it may. Even if it is accepted that the suit has reached at the stage of final hearing, in my opinion, in the interest of justice, grant of amendment is very much required as the said amendment goes to the route of the matter.

6. It is also required to be noted that the plaintiff submits that she will not lead any additional evidence in support of the amendment as the same only clarifies the boundaries of the suit property and nothing else.

7. In view of above and in the interest of justice, it will be appropriate to grant the amendment. As such, application Exh.102 in Regular Civil Suit No.183 of 2008 stands granted. The impugned order dated 20th June 2014 passed by 2nd Joint Civil Judge, Junior Division, Georai is hereby set aside. The plaintiff shall carry out amendment within two weeks from today.

8. At this stage, the plaintiff - mother has offered Rs.500/- as costs to her son - defendant, who has pleaded Rs.5,000/-, however, it will be appropriate to direct the plaintiff to pay costs of Rs.1,000/- to the defendant - her son. The payment of costs is condition precedent.

9. With above directions, writ petition stands disposed of.

(N.W. SAMBRE, J.)

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