

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

WRIT PETITION NO.11442 OF 2014

1. Dinkar Ramrao Kole,
Age 52 years, Occu. Agri.,
R/o Mirajgaon, Taluka Karjat,
District Ahmednagar
2. Vaijantabai Ramrao Kolhe,
Age 70 years, Occu. Household,
R/o Mirajgaon, Taluka Karjat,
District Ahmednagar
3. Amol Digambar Kolhe,
Age 25 years, Occu. Education,
R/o Bhingar, Taluka and District
Ahmednagar
4. Meerabai Digambar Kolhe,
Age 45 years, Occu. Agri. &
Household R/o Bhingar,
Taluka and District Ahmednagar
5. Manisha Navnath Raut,
Age 35 years, Occu. Agri &
Household R/o Nimgaon Daku,
Taluka Karjat, Dist. Ahmednagar
6. Arti Ravindra Bankar,
Age 22 years, Occu. Household,
R/o Saras Nagar, Taluka and
District Ahmednagar
7. Bharti Sandip Shinde,
Age 25 years, Occu. Household,
R/o Rahuri, Taluka Rahuri,
Dist Ahmednagar

(Petitioners No.2 to 7 are
represented through petitioner
No.1 as G.P.A. Holder)

..Petitioners
(Orig.Plaintiffs)

Versus

1. Ambadas Dina @ Dinkar Kolhe
Age 65 years, Occu. Agri.,
R/o Mirajgaon, Taluka Karjat,
District Ahmednagar

2. Bapu Dina @ Dinkar Kolhe,
Age 62 years, Occu. Agri.,
R/o Mirajgaon, Taluka Karjat,
District Ahmednagar
3. Shantabai Ambadas Kolhe,
Age 60 years, Occu. Household
R/o Mirajgaon, Taluka Karjat,
District Ahmednagar
4. Thakubai Ambadas Kolhe,
Age 58 years, Occu. Household,
R/o Mirajgaon, Taluka Karjat,
District Ahmednagar
5. Vimal Bapu Kolhe,
Age 40 years, Occu. Household,
R/o Mirajgaon, Taluka Karjat,
District Ahmednagar
6. Raghunath Ramrao Kolhe
Age 49 years, Occu. Agri.,
R/o Mirajgaon, Taluka Karjat,
District Ahmednagar

..Respondents
(Orig.Defendants)

Mr A.V. Patil (Indrale), Advocate for petitioners
Mr N.V. Gaware, Advocate for respondents 1 to 5

CORAM : N.W. SAMBRE, J.

DATE : 1st December 2015

PER COURT

1. The petition is by plaintiffs to Regular Civil Suit No.78 of 2010 which was for declaration and injunction in relation to the suit property mentioned in prayer clause, which according to the petitioners was received in partition, which was effected some time in 1969.

2. After the trial in the suit has commenced, at advanced stage, i.e. at the stage of recording of evidence, the petitioners

-plaintiffs filed application Exh.66 seeking amendment to the plaint whereby the petitioners sought incorporation of prayer for possession of the suit property in case the Court noticed that the possession is not with the plaintiff. The petitioners have also sought declaration of ownership of suit property.

3. The said claim came to be rejected by learned Civil Judge, Junior Division, Karjat by order dated 20th November 2014, as such present petition.

4. Mr Patil, learned Counsel for the petitioner would urge that even if the trial in the suit has commenced, the amendment which was necessary for deciding the real controversy involved in the suit, ought to have been granted by learned Court below. He would then urge that the learned trial Court has recorded findings on merits of the pleadings under the amendment which in any case is not permissible. While trying to draw support from the judgment of **M.C. Agrawal HUF Vs. Sahara India and Ors.**, reported in **(2008) SCC 642**, he would urge that the amendment, as was necessary for deciding the real controversy between the parties, irrespective of the prayer made in the suit and the amendment needs to be granted. For the same proposition, he has also relied upon the judgment of Apex Court in the matter of **Abdul Rehman and Anr. Vs. Mohd. Ruldu and ors.**, reported in **(2012) 11 SCC 341**.

5. Mr Gaware, learned Counsel for the respondents-defendants

would urge that the suit was filed for simplicitor injunction, based on the title. Now, by virtue of amendment, the petitioners are seeking declaration and possession of the suit property. He would then invited attention of this Court to the very conduct of the plaintiffs-petitioners in the matter of valuing their claim and payment of Court fees, which according to him amounts to substantial change in the nature of the suit and seeks dismissal of the petition.

6. Having bestowed my anxious consideration to the issues which are canvassed before this Court, it is required to be noted that the alleged partition in the suit which was formed to be the basis for initiation of the action was of 1969. Based on the same, initially a prayer for declaration is sought presuming title in favour of petitioners-plaintiffs. It is after the suit has reached at an advanced stage, the petitioners-plaintiffs have realised that the possession of the suit property is necessary and declaration also, they moved application for amendment. The nature of claim that is sought to be incorporated by virtue of amendment, in my opinion, changes the entire nature of the suit claim, as the suit for simplicitor injunction is sought to be converted into that of suit for declaration and possession.

7. In my opinion, without going into the reasons, as are recorded by the learned trial Court, it will be appropriate to hold that the rejection of the application for amendment, that too, at the stage of trial at which it was moved, was just and proper.

8. The judgments of Apex Court as are relied upon by learned Counsel for the petitioner in the matter of M.C. Agrawal HUF Vs. Sahara India and ors., and Abdul Rehman Vs. Mohd. Ruldu (cited supra), though covers the issue, however, the same are hardly of any assistance to the petitioners, particularly this Court, having noted that by virtue of amendment, the entire nature of claim is sought to be changed. As such, petition fails, stands dismissed.

(N.W. SAMBRE, J.)

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