

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

**WRIT PETITION NO. 402 OF 2015**

Indirabai W/o Dnyanoba Bhuse  
Through her power of attorney  
holder

Shri Dnyanoba S/o Anantram Bhuse ... Petitioner

Versus

Pratibha Bharag Bhuse  
& others

... Respondents

.....  
Mr. S.S. Halkude, Advocate for petitioner  
.....

**CORAM : RAVINDRA V. GHUGE**

**DATED : 16<sup>th</sup> JANUARY , 2015**

PER COURT :

1. The petitioner is the original plaintiff in R.C.S. No. 54 of 2009. The suit is at the stage of recording of evidence. Application Exhibit 107 is filed on 10-12-2014, invoking Order VI Rule 17 of the Code of Civil Procedure. Paragraph 7-A was proposed through application Exhibit 107 for being incorporated in to the plaint.

2. The explanation was that the defendant No. 1 has obtained permission for selling the suit land by filing a Civil Misc. Application No. 10 of 2009 in the District Court-I, Nilanga. The legal status and legal right of the petitioner was suppressed. The

said permission and the transaction subsequent thereto was not binding upon the petitioner.

3. By the impugned order dated 10-12-2014, application Exhibit 107 was rejected. Grievance of the petitioner is that the proposed paragraph No. 7-A is in tune with the pleadings set out in the plaint. By the introduction of the said paragraph, neither the cause of action changes nor is it alerted. Nature of the suit will remain the same. No loss, harm or prejudice of any nature whatsoever would be caused to the defendants. An amendment can be made at any stage in the proceedings. The impugned order is, therefore, unsustainable.

4. I have gone through the impugned order with the assistance of the learned Advocate for the petitioner and I have considered his submissions. The Trial Court by considering the plaint and the application Exhibit 107 has concluded in the impugned order as follows :-

*“ On careful perusal of plaint, it reveals that in plaint para No. 7 D/H has already pleaded the facts in respect of said proceeding and also pleaded that behind her back and without her knowledge the defendant No. 1 filed said Misc. Application No. 10 of 2009 and obtained the permission to sale the suit land. It has been also pleaded that the alienation effected by defendant No. 1 in favour defendant No. 4*

*is illegal, unauthorized and against the legal rights of plaintiff.”*

5. It is, therefore, clear that the Trial Court has noted that the petitioner has already pleaded in paragraph 7, such contentions which are set out in the proposed paragraph 7-A in different words. The contention as regards filing of Civil Misc. Application No. 10 of 2009 behind the back of the petitioner and the passing of the order by the learned District Judge- Nilanga, purportedly without considering the legal status and the right of the petitioner/ plaintiff, have been set out in paragraph 7.

6. The Trial Court thus concluded that when these contentions are already set out in paragraph 7, the incorporation of the proposed paragraph 7-A is not required. In my view, proposed paragraph 7-A could be said to be merely a repetition of what is set out in para No. 7.

7. In the light of the above, I do not find that the impugned order is either perverse or erroneous. The petition is devoid of merit and is, therefore, dismissed.

**( RAVINDRA V. GHUGE, J. )**