

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.152 OF 2015

Sou. Saranjitkaur Ranjitsingh Mander

.. Petitioner

Versus

Shri. Amarsingh Gurmelsingh Garewal and others

.. Respondents

Mr. R. N. Sanghavi, Advocate for the Petitioner.

**Mr. K. Y. Mandlik i/b Ms. Lalita H. Panchakshari, Advocatte for
Respondens No.1 to 3.**

CORAM : R.M. SAVANT, J.

DATE : 13th JANUARY, 2015

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 08.12.2014 passed by the Learned Joint Civil Judge, Junior Division, Pune, by which order the application Exh.72 filed by the Petitioner/original Plaintiff for amendment of the plaint came to be rejected.

2. The suit in question being Regular Civil Suit No.671 of 2009 has been filed by the Petitioner for partition of the suit properties. In so far as the suit is concerned, it is required to be noted that the parties have filed their evidence close pursis and the suit is set down for argument and kept for arguments today i.e. 13th January, 2015. The learned counsel

appearing on behalf of the Respondent Mr. Mandlik on instructions of his instructing advocate from Pune who is present in the Court state that the Respondent No.1 i.e. Defendant No.1 has filed the written arguments in the Court today.

3. By the application Exh.72, the Plaintiffs sought to amend the plaint so as to incorporate facts relating to construction of land by Defendant No.1 with the allegation that same was done with intent to deprive the Plaintiffs share in the suit property. Secondly, the Plaintiff wants to incorporate the allegations that the relinquishment Deed dated 15.12.1979 executed by the Plaintiffs and her sister who is the Defendant No.4 is forged, fabricated, void and illegal because the signature of Gurmelsingh i.e. the father on the said document is forged and that the Plaintiff and her sister had never gone to the office of Sub-Registrar, Haveli No.2 that the said document is brought in to existence only to defraud the Plaintiff. The Plaintiff is also seeking incorporation of paragraph 7A to the effect that the Defendant has brought in to existence a false Will Deed dated 02.04.1985. The Plaintiff is also alleging the said document as forged, fabricated, void, illegal and procured only with an intent to deprive the plaintiff and her sister. The Plaintiff also wants to add para No.8A in the plaint. Thereby claiming share in Survey No.129/1A which is likely to be acquired for road widening. The Plaintiff also wants

to add paragraph 14A to the effect that Survey No.396/1/2 on which land Gurmelsingh has constructed three storied building in which the Plaintiff has 1/6th share. The Plaintiff also wants to add Survey No.129/1/A situated at village Yerwada and Survey No.396/1/2 situated at Village Kasarwadi. The Plaintiff has averred that she is ready to pay Court Fees of her undivided share valued to Rs.20,000/- in respect of the property at Yerwada and Kasarwadi.

4. It is required to be noted that the written statement filed on behalf of the Defendants No.1 to 3 was amended pursuant to the permission granted on 13.09.2010, wherein reference to the execution of the Will Deed dated 02.04.1995 by Gurmelsingh was made. In spite of the said amendment in the year 2010, the Plaintiff has not made consequential amendment in the plaint. It is further required to be noted that the issues were framed on 24.09.2013. The Plaintiff filed her examination-in-chief on 06.01.2014 and she was extensively cross-examined by the Defendants. The Plaintiff filed her evidence close pursis and thereafter the Defendant No.1 led oral evidence for himself and the Defendants No.2 to 5 examined witnesses in respect of the Will Deed dated 02.04.1985 and filed evidence close pursis and the suit was set down for the final arguments. The Trial Court having regard to the aforesaid facts as also having regard to the fact that it is only after the advocates were changed that the instant

application was filed held that the Plaintiff has not satisfied due diligence test as in the instant case the trial has commenced is at the fag end.

5. The learned counsel appearing on behalf of the Petitioner Shri. Sanghavi in support of his contention that the Trial Court has erred in rejecting the application for amendment Exh.72 sought to place reliance on the Division Bench Judgment of the **Madras High Court dated 16.11.2011** in the matter of **Solavaiammal Vs. Ezhumalai Goundar** and also judgment of the Apex Court reported in **(2000)1 SCC 712** in the matter of **B. K. Narayana Pillai Vs. Parameswaran Pillai** and another. In so far as the Division Bench judgment of the Madras High Court is concerned, the Division bench has held that an application to include left out property should be allowed so as to avoid multiplicity of the proceedings. In so far as judgment of the Apex Court (supra) is concerned, the Apex Court has held that an amendment sought under Order 6 Rule 17 should be permitted where it would result in solution of real controversy between parties, without altering original cause of action. In my view, the judgments would have no application in the facts of the present case, wherein by the amendment sought the Plaintiff seeks to challenge the Relinquishment Deed and Will Deed for the first time by way of said amendment long after the trial has commenced and is at the fag end when the suit is set down for the arguments. The fact that the said

documents were adverted to for the first time in the year 2010 also cannot be lost sight of. The amendment sought is also after a long delay of the facts being known to the Plaintiffs for which no reasonable explanation is forthcoming. Permitting such an amendment would unnecessarily delay the decision in the suit which as indicated above has been set down for arguments. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed. At this stage, learned counsel for the Petitioner seeks stay of the instant order. In the facts and circumstances of the case, the said prayer is rejected.

[R.M. SAVANT, J]