

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO.1440 OF 2015**

Pandurang Sadu Shinde

...Petitioner

vs.

Parshuram Keshav Shinde & Ors.

...Respondents

Mr. P. J. Shinde for the Petitioner.

CORAM : R. M. SAVANT, J.

DATE : 26th FEBRUARY, 2015.

PC. :-

The writ jurisdiction of this Court is invoked against the order dated 4th December, 2014 passed by the learned Joint Civil Judge, Junior Division, Wai, by which order the application Exhibit 133 filed by the Plaintiffs for amendment of the plaint came to be allowed and the Plaintiffs have been permitted to amend the complaint in terms of the amendment sought vide the said application.

2] In so far as the amendments sought are concerned, the first amendment sought is of incorporating some parties as Defendants in view of the fact that the Suit in question is one for partition. The second amendment is in respect of the incorporation of the genealogy of the family right from the common ancestor. The third amendment sought is by way of deleting the word “ownership” and to be substituted by the word “tenancy” in para 6 of the claim.

3] In so far as first amendment i.e. addition of parties is concerned, in my view no exception would be taken to the said amendment as considering the fact that the Suit is for partition all the concerned parties are required to be arraigned before the Court. In so far as the genealogy is concerned, the amendment granted as sought cannot be questioned. It is third amendment which the learned counsel for the Petitioner states could not have been allowed by the Trial Court as what the Plaintiffs are seeking is the change in the nature of the declaration sought whereas the declaration sought earlier was about ownership. Now the Plaintiffs are claiming declaration of tenancy and, therefore, whether the said relief can be granted by the Civil Court, is the issue which arises for consideration according to the learned counsel for the Petitioner.

4] In my view, it is well settled that at the stage of considering an application for amendment, the merits of the case need not be gone into. The Trial Court has deemed it appropriate to allow the amendment sought vide the said application Exhibit 133. Having regard to the fact that the Suit in question is one for partition, it is always open for the Defendants to take such defences as are available to them and permissible in law. The aspect as to whether the relief sought by way of a declaration of tenancy could be granted by the Civil Court is a defence available to the Petitioner i.e. the Defendant No.1 which

undoubtedly, he is entitled to take in the Suit by filing his additional written statement. In my view, therefore, no case for interdiction in the writ jurisdiction of this Court is made out. However, subject to the above, the Writ Petition is dismissed.

5] The Defendants would be entitled to file their additional written statement as would be directed by the Trial Court.

(R. M. SAVANT, J.)