

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

WRIT PETITION NO.1276 OF 2010

Mrs. Niramala Anand Deshmukh	]	
Aged : 54 years, Occ : Housewife	]	
R/o. Karnavati Grand Manor,	]	 Petitioner
Near Datta Mandir Road, Nashik road	]	(Ori.Defendant No.4.)

versus

- | | | | |
|------|---------------------------------------|---|--|
| 1] | Ms. Someshwari Deelip Deshmukh |] | |
| | Age 29 years, Occ : |] | |
| | |] | |
| 2] | Ms. Rajeshwari Deelip Deshmukh |] | |
| | Age 27 years, Occ : |] | |
| | |] | |
| 3] | Ms. Neeta Deelip Deshmukh |] | |
| | Age 24 years, Occ : |] | |
| | |] | |
| | Through their power of Attorney |] | |
| | Mrs. Deepalaxmi Deelip Deshmukh |] | |
| | Age 50 years, Occ : Housewife |] | |
| | Deshmukh Wada, Devalaligao, |] | |
| | Dist. Nashik |] | |
| | |] | |
| 4] | Mr.Deelip Shankarrao Deshmukh |] | |
| | Age 65 years, Occ : Advocate |] | |
| | R/o. Deshmukh Wada, Devalaligao, |] | |
| | Dist. Nashik |] | |
| | Died during pendency of Writ Petition |] | |
| | represented through heirs and |] | |
| | legal representative : |] | |
| | |] | |
| 4(a) | Smt. Deepalaxxi Dilip Deshmukh |] | |
| | Age 54 years, Occ : Household |] | |
| | |] | |
| 4(b) | Ms. Someshwari Dilip Deshmukh |] | |
| | Age : 32 years, Occ : Advocate |] | |
| | |] | |
| 4(c) | Ms. Rajeshwari Dilip Deshmukh |] | |
| | Age 30 years, occ : Fashion Designer |] | |

- 4(d) Ms. Nita Dilip Deshmukh]
 Age 28 years, Occ : Editor]
]
 All r/o : Deshmukh wada, Sambhaji Road]
 Devalaligao, Nashik Road, Nashik]
]
 (Respondent No.4(b) to 4(d)]
 are already on record as Respondent]
 No.1 to 3]
]..... Respondents
 5] Smt. Vijaya Shivajirao Desai](Nos.1 to 3 Orig.Plaintiffs
 Age : 67 years, Occ : Housewife]Nos.4 & 5 Orig.Defendant
 'Koyana Doulat' Banglow,]Nos.2 & 3)
 Powai Naka, Satara]

Ms. Deepa Ahuja for the Petitioner.

Mr. Girish R Agarwal for the Respondent Nos.1 to 3.

CORAM : R. M. SAVANT, J.
 DATE : 16th October 2015

ORAL JUDGMENT :-

1 The above Writ Petition filed under Article 227 of the Constitution of India take exception to the order dated 14/01/2010 passed by the learned Civil Judge, Senior Division, Nashik by which order the application (Exhibit 250) for amendment of the written statement filed by the Petitioner i.e. the Defendant No.4 to the suit came to be rejected.

2 The facts necessary to be cited for adjudication of the above Petition, in brief, can be stated thus :-

The suit in question being Special Civil Suit No.73 of 2001 has

been filed by the Respondent Nos.1 to 3 herein for partition and separate possession of the suit properties which are mentioned in the plaint. The Defendant No.1 is the grand father of the Plaintiffs and the Defendant No.2 – Deelip Shankarrao Deshmukh is the father of the Plaintiffs. The Petitioner herein i.e. the Defendant No.4 is the paternal aunt of the Plaintiffs being the sister of the Defendant No.2 – Deelip Shankarrao Deshmukh. The Defendant No.4 i.e. the Petitioner herein filed her written statement on 22/06/2009. It appears that the Defendant No.1 i.e. the grand father of the Plaintiffs had filed his counter claim and the Defendant No.2 Deelip Shankarrao Deshmukh had filed his written statement on 09/07/2003. The Defendant No.2 also filed his additional written statement to the counter claim of the Defendant No.1.

3 The matter proceeded to trial and the evidence of the Plaintiffs was completed on 06/08/2008. It is thereafter that the instant application (Exhibit 250) came to be filed by the Defendant No.4 seeking inclusion of certain properties which were in possession of the Defendant No.2 and certain amounts mentioned in the said amendment application.

4 The said amendment application (Exhibit 250) was opposed to on behalf of the Plaintiffs on the ground that they have closed their evidence and also on the ground that the said properties could not be included.

5 The Defendant No.2 also filed his reply to the said application and also challenged it on the same grounds as the Plaintiffs viz. the Plaintiffs have closed their evidence and that the said application is belated.

6 The Trial Court considered the said application (Exhibit 250) and has rejected the same by the impugned order dated 14/01/2010. The Trial Court has proceeded on an erroneous premise that by the amendment application the Defendant No.4 is seeking to file a counter claim and has thereafter on the basis of the fact that the suit is filed on 15/02/2001 and that the Plaintiffs have closed their evidence, rejected the application on the ground that there is no explanation for the belated action. It is the said order dated 14/01/2010 which is taken exception to by way of the above Writ Petition.

7 The learned counsel appearing for the Petitioner i.e. the original Defendant No.4 Ms. Deepa Ahuja sought to reiterate the case of the Petitioner before the Trial Court viz. that the properties, which are in possession of the Defendant No.2, who is the father of the Plaintiffs, are required to be brought in the common hotch-potch in so far as the suit for partition is concerned. It was the submission of the learned counsel for the Petitioner that the Trial Court has proceeded on an erroneous basis that the Defendant No.4 is seeking to file a counter claim when in fact what was sought by the Defendant No.4 was only the amendment of the written statement.

8 Per contra, the learned counsel appearing for the Respondent Nos. 1 to 3 i.e. the original Plaintiffs Shri Girish Agarwal fairly conceded that the Trial Court has proceeded on an erroneous premise that the Defendant No.4 was seeking to incorporate a counter claim. However, it was the contention of the learned counsel for the Respondent Nos.1 to 3 that the matter is required to be relegated back to the Trial Court for a denovo consideration of the said application (Exhibit 250).

9 Having heard the learned counsel for the parties, in my view, the order passed by the Trial Court rejecting the application (Exhibit 250) is not sustainable. It is well settled that application for amendment of the pleadings cannot be rejected only on the ground of delay. It is required to be borne in mind that the instant suit i.e. Special Civil Suit No.73 of 2001 is filed for partition and separate possession of the joint family properties. It is in the said context that the matter would have to be seen. By the amendment sought in the written statement, what the Defendant No.4 was seeking is to contend that there are other properties of the joint family properties which have not been brought in the common hotch-potch and was therefore seeking to bring the said properties in the common hotch-potch so as to facilitate the complete and effectual adjudication of the suit. Whether the Defendant No.4 would be entitled to a share in the said properties is a matter which can always be

considered at the hearing of the suit. The Trial Court has proceeded on an erroneous premise probably in view of the averments made in paragraph 2 of the application wherein a direction is sought that the Plaintiffs be directed to include the properties and that the said properties being the ancestral properties, the Defendant No.4 has half share in it, and that if the partition is granted, the Defendant No.4 would pay the appropriate court fees on it. In so far as the amendment sought is concerned, it is not the case of the Petitioner i.e. the Defendant No.4, that by the amendment a counter claim is sought to be included. As contended by the learned counsel for the Petitioner before this Court the properties which are in possession of the Defendant No.2 are sought to be brought in the common hotch-potch.

10 As indicated above, whether the Defendant No.4 would be entitled for the relief of partition in respect of the said properties, is a matter for the Trial Court to consider at the hearing of the suit. However, having regard to the well settled position in law that the amendment which results in complete and effectual adjudication of the dispute between the parties is required to be allowed, that the instant application (Exhibit 250) would have to be allowed.

11 In so far as the contention of the learned counsel for the Respondent Nos.1 to 3 that the matter be remanded back to the Trial Court for a denovo consideration of the application is concerned, in my view, it is totally

unnecessary to remand the matter back as the above Petition is pending in this Court from the year 2010 and since sufficient time has already elapsed and the instant suit is of the year 2001, no useful purpose would be served by remanding the matter back to the Trial Court.

12 In that view of the matter, the impugned order dated 14/01/2001 would have to be quashed and set aside and is accordingly quashed and set aside. The application (Exhibit 250) filed by the Defendant No.4 would stand allowed. Amendment to be carried out in the written statement within a period of 6 weeks from date. On amendment being carried out, the Trial Court to proceed with the matter by offering proper opportunity to the parties including the opportunity to the Plaintiffs to adduce rebuttal evidence. Needless to state that the contentions of the parties on merits are kept open. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with the parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]