

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

WRIT PETITION NO.3243 OF 2006

- | | | |
|----|------------------------------------|---------------------|
| 1] | Smt. Hirabai Vishnue Kate |] |
| | Age 60 years, Occupation Household |] |
| | R/a 230, Pimple Gurave, |] |
| | near Bhairavnath Co-op. Society |] |
| | Pune 411027 |] |
| | |] |
| | (Deleted) |] |
| | |] |
| 2] | Smt. Mankarana Vishnue Kate |] |
| | Age 50 years, Occupation Household |] |
| | R/a 230, Pimple Gurave, |] |
| | near Bhairavnath Co-op. Society |] |
| | Pune 411027 |] |
| | |] |
| | (Deleted) |] |
| | |] |
| 3] | Shri Dhondiba Vishnue Kate |] |
| | Age 48 years, Occupation Service |] |
| | R/a 230, Pimple Gurave, |] |
| | near Bhairavnath Co-op. Society |] |
| | Pune 411027 |] |
| | |] |
| 4] | Sau Vimal Suresh Shinde |] |
| | Age – Adult, Occupation Household |] |
| | R/a. Survey No.31, Chaudharinagar |] |
| | Dhanori, Pune 411015 |] |
| | |] |
| 5] | Sau Sharda Baban Tingare |] |
| | Age – Adult, Occupation Household |] |
| | R/a Ureka Complex |] |
| | Baburao Tingare Chaul |]..... Petitioners. |
| | Dhanori, Pune 411015. |] (Ori. Plaintiffs) |

versus

- | | | |
|----|----------------------------|---|
| 1] | Shri Sopan Shripati Kate |] |
| | Since deceased through LRs |] |

- 1A] Shri Tukaram Sopan Kate
Age about 72 years, Occ – Retired
R/a 354, Dapodi, near Maruti Temple
Shivaji Statue, Pune 411 012.
- 1B] Shri Dyanoba Sopan Kate
Age 60 yrs, Occ – Nil
R/a 353, Dapodi, near Maruti Temple
Shivaji Statue, Pune 411 012.
- 1C] Prakash Sopan Kate
Age 52 years, Occupation Service
R/at Plot No.2, 'Yashda' Nakshtra
Housing Society, Vishwashanti Colony
Pimple Soudagar, Pimpri, Pune 27
- 1D] Chandrakant Sopan Kate
Age 50 yrs, Occu : Service
R/a 353, Dapodi, near Maruti Temple
Shivaji Statue, Pune 411 012.
- 1E] Smt. Muktabai Chabu Shinde,
Age : 68 yrs, Occu : Household,
R/at Post Rashe, Tal. Khed
Dist. Pune.
- 1F] Sou.Subhadra Laxman Kandhare
Age : 56 yrs, Occ : Agriculture
R/at Senapati Bapat Chowk
Near Masjid & Municipal Toilet
Mahadeo Temple, Dapodi,
Pune – 12
- 1G] Smt. Aruna Chintaman Gaware
Age : 54 yrs, occu : Household
R/at Post Moi, Tal – Khed
Dist. Pune.
- 2] Shri Prakash Sopan Kate
Age 42 years, occupation Service
C/o Gadge Painter, Jaimala Nagar,
Lane No.3, Old Sangavi
Pune 411027

- | | | |
|-----|---|---------------------|
| | |] |
| 3] | Sou.Nayana Prakash Kate |] |
| | Age 39 years, Occ – Household & |] |
| | Agriculture. R/a 355, Dapodi, Pune 41102] |] |
| 4] | Sau. Ratanbai Tukaram Kate |] |
| | since deceased through her LRs |] |
| 4A] | Shri Tukaram Sopan Kate |] |
| | Age about 72 years, occu – Retired |] |
| | R/a 354, Dapodi, near Maruti Temple |] |
| | Shivaji Statue, Pune 411 012. |] |
| 4B] | Shri Vinayak Tukaram Kate |] |
| | Age : 38 yrs. Occu : Self employment |] |
| | R/a 354, Dapodi, near Maruti Temple |] |
| | Shivaji Statue, Pune 411 012. |] |
| 4C] | Shri Marlidhar Tukaram Kate |] |
| | Age : 36 yrs. Occu : Private employment |] |
| | R/a 354, Dapodi, near Maruti Temple |] |
| | Shivaji Statue, Pune 411 012. |] |
| 4D] | Shri Govardhan Tukaram Kate |] |
| | Age : 34 yrs. Occu : Private employment |] |
| | R/a 354, Dapodi, near Maruti Temple |] |
| | Shivaji Statue, Pune 411 012. |] |
| 4E] | Sou. Surekha Somnath Rakshe |] |
| | Age : 32 years, occu : Household |] |
| | R/at Post Sangawade, Tal. Maval |] |
| | Dist. Pune |] |
| 4F] | Sou. Sarikha Sudam Kolekar |] |
| | Age 30 years, Occu : Household |] |
| | R/at Dhamne, Post Koye |] |
| | Taluka Khed, Dist. Pune |] |
| 5] | Shri Tukaram Sopan Kate |] |
| | Age about 61 years, Occ – Retired |] |
| | R/at 353, Dapodi, Pune 411 012 |] |
| | |]..... Respondents |
| | |] (Ori. Defendants) |

Mr. Ashok B Tajane for the Petitioners.

Mr. S R Agarkar i/by Mr. U B Nighot for the Respondent Nos.1 to 5.

CORAM : R. M. SAVANT, J.

DATE : 16th October 2015

ORAL JUDGMENT :-

1 The writ jurisdiction of this Court is invoked against the order dated 16/02/2006 passed by the learned Civil Judge, Senior Division, Pune by which order the application (Exhibit 96) for amendment of the plaint came to be rejected.

2 The suit in question being Special Civil Suit No.807 of 2000 has been filed for partition and possession and for declaration that the partition deed dated 23/01/1993 is forged and illegal, and the sale deed dated 15/07/1997 in respect of the suit land is also challenged on the ground that the same is forged and illegal. The suit proceeded to trial and the Plaintiff's cross examination was complete. It is thereafter that the instant application (Exhibit 96) came to be filed by the Plaintiffs for amendment of the plaint. A perusal of the said application discloses that large scale amendments have been sought in the plaint in the matter of joining the parties, deleting averments, inclusion of averments and modification of the averments.

3 The said application was opposed to on behalf of the Defendants by contending that allowing the said application for amendment would result in the admissions in both the pleadings as well as in the evidence being taken away.

4 The Trial Court considered the said application and has rejected the same by the impugned order dated 16/02/2006. The gist of the reasoning of the Trial Court is that if the amendment application is allowed, the same would drastically changed the suit and would also result in withdrawal of the admissions given by way of pleadings which could not be allowed at the said stage. As indicated above, it is the said order dated 16/02/2006 which is taken exception to by way of the above Writ Petition.

5 The learned counsel for the Petitioners/Plaintiffs sought to justify the amendments on the ground that the property remains the same and what is sought to be done is the inclusion of the new parties and the inclusion of pleadings and deletion of pleadings. It was the submission of the learned counsel for the Petitioners that if the amendment is allowed, the same would result in the effectual and complete adjudication of the suit. The learned counsel for the Petitioners in support of his said contention sought to rely upon the judgments of the Apex Court reported in (2001) 2 SCC 472 in the matter of Ragu Thilak D. John v/s. S. Rayappan and others and (2004) 6 SCC 415

in the matter of *Pankaja and another v/s. Yellappa (Dead) by LRs and others.*

6 Per contra, the learned counsel for the Respondents Shri Agarkar would contend that by the amendment sought there is an entire new suit which is sought to be incorporated and therefore amendment could not be allowed.

7 Having heard the learned counsel for the parties and having gone through the large scale amendments sought with the assistance of the learned counsel for the parties, in my view, the Trial Court is right in observing that the same would result in change in the suit and would also take away the admissions of the Plaintiffs in respect of the genealogy and in respect of the nature of the property. The amendments cannot in any manner said to be clarificatory in nature or consequential to the averments which are existing. By the large scale amendments sought, the Plaintiffs seek to change the very basis of the suit and claim made therein. The suit would undergo a metamorphosis. The judgments cited (supra), in my view, would not aid the Petitioners/Plaintiffs, having regard to the nature of the amendments sought.

8 In my view, therefore the order passed by the Trial Court rejecting the application (Exhibit 96) filed by the Plaintiffs cannot be faulted with. The

same does not warrant any interference at the hands of this Court in its writ jurisdiction. The above Writ Petition is accordingly dismissed. Rule discharged with no order as to costs.

9 At this stage the learned counsel appearing for the Petitioners/Plaintiffs Shri Ashok Tajane prays for continuation of the ad-interim order. In the facts and circumstances of the present case, the said prayer is rejected.

[R.M.SAVANT, J]