

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

WRIT PETITION (STAMP) NO.11664 OF 2014

Sou. Rajashri Yogesh Kininge

.. Petitioner

Versus

Shri. Bhalchandra Kallappa Hagare and others

.. Respondents

Shri. Vijay Killedar, for the Petitioner.

Shri. Manoj A. Patil, for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 04th MARCH, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 07.03.2014 passed by the Learned Joint Civil Judge, Junior Division, Kurundwad, by which order the application Exh.83 filed by the Defendant for amendment of his written statement came to be allowed.

2. It seems that the suit is at the stage where the affidavit of examination-in-chief is filed by the Plaintiff on 01.02.2014 and the Plaintiff's witness is to be cross-examined. The instant application Exh.83 was filed on 21.02.2014 by the Defendants to amend the written statement which has been filed so as to incorporate paragraphs 27 to 29 in the written statement. The averments in the said paragraphs revolving around the suit property bearing Gat No.170 and 252 being Devasthan

Inam lands and therefore are impartible. The said application Exh.83 was opposed to on behalf of the Plaintiff. The Plaintiff and the Defendants are sisters being daughters of one Kallappa Hagare. The Plaintiff has claimed ½ portion in the said land bearing Gat No.252 and 170. The Defendant in the original written statement has taken a plea that the lands which are in possession of the Defendant have come to her share by way of family arrangement. It is thereafter that the instant application came to be filed for incorporating the said paragraphs so as to incorporate averments relating to the fact that the lands are Devasthan Inam lands. Before the Trial Court reliance was placed on the judgment of a Learned Single Judge of this Court reported in 2014(1) Mh.L.J. 170 in the matter of Vera Lelisa Vigegal Pereira Vs. Agnelo Caltaro Colow, wherein it was held that an amendment sought after the trial commences has to satisfy the due diligence test. The Trial Court considered the said application and has by the impugned order allowed the same. The Trial Court in allowing the said application has opined that the amendment sought is necessary to determine the real question in controversy between the parties and for just decision of suit. For the delay caused in filing the application the Trial Court has imposed costs on the Defendants.

3. The Learned Counsel appearing on behalf of the Petitioner Shri. Vijay Killedar would submit that in terms of the law laid down in AIR

2009 SC 1433 in the matter of Vidyabai Vs. Padmalatha's the Trial Court looses the jurisdiction to consider an application for amendment once the trial has commenced. Unless the conditions precedent therefor are satisfied namely that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial. No doubt, in the instant application there is no mention so as to why the said application was moved at the said length of time. However, what is required to be noted is that by the instant application the fact that the lands are Devasthan Inam lands is sought to be brought on record. The said aspect can be relevant aspect whilst considering the suit which has been filed for partition. As without the said aspect being considered the adjudication of the suit may lead to further complications. In that sense the averments which are sought to be incorporated can be said to be by way of placing facts on record which are relevant for adjudication of the suit. In my view, therefore the Trial Court was right in allowing the application Exh.83 filed by the Defendant for amendment of her written statement. For the delay caused, the Trial Court has rightly imposed costs on the Defendant. Hence, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed. However, the Defendants to pay additional costs of Rs.1000/- to the Plaintiff to be deposited in the Trial Court within two weeks from date.

[R.M. SAVANT, J]