

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.223 OF 2012

Narayansa Vishwanathsa Kshatriya.] ... Petitioner

Versus

Sou. Mukta Lalit Shikare and Ors.] ... Respondents

Mr. Hemant Ghadigaonkar for Petitioner.
Mr. S. P. Dighe for Respondent No.1.

CORAM :- M. S. SONAK, J.
DATE :- MARCH 25, 2015

P. C. :-

1. This petition is directed against the Order dated 19/08/2011 made by the 4th Joint Civil Judge, Senior Division, Nashik, rejecting the Petitioner's application for amendment.

2. If the original Counter-Claim filed by the Petitioner is perused, then there is an admission therein that the suit property were the independent property of late Bhagirathibai. In fact, the learned Civil Judge has observed that all the parties to the suit were unanimous in their pleadings that the suit property were allotted to late Bhagirathibai in partition and they were her separate property.

3. The proposed amendment seeks to introduce a contention that the suit property were acquired from the joint family funds as the said Bhagirathibai had no independent source of income. The proposed amendment also seeks to hint that the partition of 1970 was merely a paper partition for the purposes of tax planning. On this basis, the proposed amendment seeks to introduce the contention that the suit property continue to be joint family property.

4. If the aforesaid amendments are permitted on such a belated stage, then the same would have the effect of the Petitioner being permitted to withdraw admissions in earlier pleadings. This is the ground on which the learned Civil Judge has declined leave to amend the Counter-Claim.

5. There is no jurisdictional error or perversity in the approach.

6. Accordingly, no case is made out to interfere with the impugned order.

7. This petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)