

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 786 OF 2016

1. Narayan Devram Chaudhari
Age: 68 years, Occ. Agriculture,
R/o LIC Colony, Dhule Road,
Amalner, Tq. Amalner,
Dist. Jalgaon.
2. Tukaram Devram Chaudhari
Age: 66 years, Occ. Agriculture,
R/o Near Madkya Maroti, Kazipura,
Parola , Tq. Parola,
Dist. Jalgaon.

... Petitioners

Vs.

1. Vatsalabai Shankar Chaudhari
Age: 67 years, Occ. Household,
R/o Mhasave, Tq. Parola,
Dist. Jalgaon.
2. Anusayabai Vitthal Chaudhari
Age: 62 years, Occ. Household,
R/o Mhasave, Tq. Parola,
Dist. Jalgaon.
3. Hirabai Bhagwan Chaudhari
Age: 62 years, Occ. Household,
R/o C/o. Bhagwan Hiranman Chaudhari
Marwad, Tq. Amalner,
Dist. Jalgaon.
4. Vimalbai Vinayak Chaudhari
Age: 60 years, Occ. Household,
R/o C/o. Vinayak Chindhu Chaudhari
Behind Abhay College, 23rd Plot No.2,
Ram Nagar, Dhule.

... Respondents

Mr. Girish Rane, Advocate for the petitioners.
Mr. S.S. Patil, Advocate for the respondent no.1.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 20-06-2016.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties.

2. Aggrieved by the order dated 15-12-2015 upon an application exhibit-31 in Regular Civil Suit No. 21 of 2007, petitioner-plaintiff is before this court as his request for amendment to plaint stands turned down. After hearing the learned counsel it emerges that petitioners have filed aforesaid regular civil suit for partition, and separate possession and injunction in respect of gut no. 452.

2. Learned counsel for the petitioners contends that said property went to the share of Smt. Vanubai, their mother has interest in the same limited for life and after her death it was to come back to the petitioners and others in the family. As the mutation entry observed something which is adverse to the petitioners interest, they had sought amendment to the plaint in the suit. He further submits that in the suit although issues have been framed and the suit is to reach the stage of trial.

3. Learned counsel contends that the court had erred in purporting to enter into merits of the case without letting any opportunity to petitioners in respect of the amendment. He submits that it is settled law that while considering amendment application, merits and demerits of contentions in the proposed amendment may not be looked into and the court has committed a grave error at that.

4. Learned counsel Mr. Patil appearing for original defendant no.1 contends that the court may have seemingly decided the merits, however, it has decided it rightly and as mutation entry cannot be a subject matter of challenge in a civil suit. Additionally, he refers to that regular civil suit no. 29 of 2008 is pending among the parties. The averments about Gut No. 452 on behalf of the present petitioners may give rise to inconsistency. He further submits that the amendment may cause change in the nature of the suit.

5. At the end of hearing it appears that R.C.S. No. 29 of 2008 is pending in which evidence has yet not commenced. It is for partition of several properties including Gut No. 452. Having regard to law as it stands the courts generally are to approach the amendments liberally. The law also further shows that merits of the contents of the amendment may not matter while considering

application for amendment.

6. Although, it is contended that the reasons have not been given by the petitioners as to why the amendments are necessary yet since the suit concerns this property as well and the plaintiffs considers the amendment appropriate for effective adjudication, the same may not be detained from being allowed to be carried out the for the reasons which are not germane while the application was being considered.

7. The writ petition as such is allowed in terms of prayer clauses 'A' and 'B'. Application exhibit-31 stands granted. The R.C.S. No. 21 of 2007 to proceed accordingly. Rule made absolute in aforesaid terms.

(SUNIL P. DESHMUKH)
JUDGE