

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8877 OF 2016

Jamil Ahmed Abdul Khalil

.. Petitioner

Versus

Ayeshabano Eklak Ahmed and others

.. Respondents

Shri Vinesh Solshe, Advocate h/f Shri Mahesh H. Patil, Advocate
for the Petitioner.

Shri S. P. Brahme, Advocate for Respondent Nos. 1 to 3.

CORAM : S. V. GANGAPURWALA, J.

DATE : 06TH DECEMBER, 2016.

PER COURT :

. The application filed by the respondents/plaintiffs seeking amendment is allowed. Aggrieved thereby the defendant has filed present petition.

2. Mr. Solshe, the learned counsel for the petitioner submits that, the suit is originally filed for declaration of ownership and injunction. The application for injunction was contested. After the order was passed by the District Court in Miscellaneous Civil Appeal instant amendment application has been moved. The learned counsel submits that, in the original plaint the averments with regard to the will were made to the effect that, the said will has been got executed by the defendant by putting

pressure upon the executant that is Rizwanabano, whereas in the amendment application altogether new theory is been introduced that is the will is forged one. According to the learned counsel, the plaintiffs were aware of the will. Even averments in respect of will were made and it was stated that, the plaintiffs may institute separate suit challenging the said will. When the plaintiffs were aware of the facts, then there was no impediment for them to plead in the original plaint. Even otherwise plaintiffs cannot be allowed to take contrary and different stand by way of amendment. The learned counsel relies on the judgment of the Apex Court in a case of Municipal Corporation of Greater Bombay Vs. Lala Pancham and others reported in *AIR 1965 SC 1008*.

3. The learned counsel further submits that, three plaintiffs had filed the suit and the amendment application is filed only by two plaintiffs. On this count also amendment application was not tenable. The learned counsel submits that, the learned Trial Judge has failed to consider that, the plaintiffs are altogether changing the nature of the suit, so also taking contrary plea and a plea of which there was no whisper in the original plaint.

4. Mr. Brahme, the learned counsel for respondents/original plaintiffs supports the order.

5. I have considered the submissions canvassed by learned counsel for respective parties. It appears that, the application for amendment is filed even prior to framing of issues. The suit originally is filed for declaration of ownership and injunction in respect of suit property. By way of amendment prayer of partition is sought to be introduced, so also challenge is made to the will said to have been executed by Rizwanabano in favour of the defendant. In the original plaint averments with regard to the will appears i. e. the will has been got executed by putting pressure upon the executant and taking disadvantage of the illness of Rizwanabano and the same is illegal and void. In the plaint, it was stated that separate suit would be filed for the said purpose and by way of amendment the said will is also challenged. Additional plea is being raised by way of amendment that is the said will is forged, fabricated and elaborate facts are being placed challenging the will. The nature of the suit would certainly not change. The suit property remains the same. The averments are made challenging the will deed. It cannot be said that altogether a different stand has been taken by the plaintiffs. The judgment of the Apex Court in a case of **Municipal Corporation of Greater Bombay Vs. Lala Pancham and others** was on different premise.

6. Considering that the suit is at its nascent stage, the application for amendment will have to be liberally construed.

Even otherwise the defendant will have every opportunity to file written statement to the amended plaint and put forth his case.

7. The discretion has been exercised by the Trial Judge in plausible manner. As such no case for interference is made out. The writ petition according is disposed of. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Dec. 16