

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

**WRIT PETITION NO. 2720 OF 2015**

SHIVAJI BANDU GALDHAR AND OTHERS  
VERSUS  
LAXMAN BAPU GALDHAR AND OTHERS

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Advocate for Petitioners : Mr N S Jaju  
Advocate for Respondents : Mr Y V Kakde

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**CORAM : V.K. JADHAV, J.**

**Dated: February 26, 2016**

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**PER COURT :-**

1. With the consent of learned counsel for respective parties, heard finally.

2. The petitioner/original plaintiff instituted a suit bearing Regular Civil Suit No.206 of 2013 before the Civil Court for partition and separate possession of the suit property and further declaration and injunction. The respondents/defendants have strongly resisted the suit by filing written statement and pointed out that there are some mistakes in the genealogical tree as the same is incomplete and also raised various objections. Consequently, the petitioners/plaintiffs filed an application at Exh.49 seeking amendment in the plaint,

addition of the parties and for bringing on record the legal heirs of one Bandu/original plaintiff. So far as the prayer to the extent of bringing on record the legal representatives of said Bandu is concerned, the same is allowed by the trial court, however, application at Exh.49 seeking amendment in the plaint and addition of the parties came to be rejected. Hence, this writ petition.

3. Learned counsel for the petitioners submits that, there were some mistakes in the genealogical tree and the respondents/defendants since pointed out the same in paragraph no.24 of the written statement, the petitioners/plaintiffs filed an application for correcting the same. Learned counsel submits that, in fact, respondents/defendants having raised no dispute about the said genealogical tree. So far as addition of defendants no. 10 to 16 in the suit are concerned, in the light of the correction in the genealogical tree, said addition of defendants no. 10 to 16 is in accordance with that. Learned counsel further submits that, the Trial Court has erroneously rejected the application.

4. Learned counsel for the respondents/defendants submits that, the application Exh.49 is vague. Since the respondents/defendants have pointed out in their written statement about incomplete genealogy, the petitioners/plaintiffs by filing an application Exh.49 is filling up the lacuna. Learned counsel submits that, it is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Learned counsel in order to substantiate his contention, places reliance on the judgment in case of **Vidyabai and others.** Vs. **Padmalatha and another** reported in 2009 (2) SRJ 454.

5. The learned Judge of the Trial Court, in paragraph No.11 of the impugned order has observed that, the application in respect of the amendment in genealogical tree and addition of the parties appears vague, ambiguous and therefore deserves to be rejected. I do not find any ambiguity or vagueness in the application Exh.49. The respondent/defendants in paragraph No.24 of the written statement given correct genealogy.

It appears that, there are some mistakes in the plaint about genealogy and accordingly, by way of filing application Exh.49 the petitioners/plaintiffs are seeking permission of the Court to correct it by carrying out the amendment. This is a suit for partition and separate possession and in that way, the correct genealogy is required to be placed before the court. Furthermore, in view of the said genealogical tree, the persons appeared in the correct genealogical tree are required to be added as the defendants; since the suit is for partition.

6. In the light of above, impugned order calls interference. Hence, following order.

### **ORDER**

- I. The order dated 3.12.2014 passed by the learned Civil Judge J.D. Shevgaon, below Exh.49 in Regular Civil Suit No.206 of 2013, thereby rejecting the of application for amendment in genealogical tree and addition of the defendants no. 10 to 16 with costs of Rs.500/- payable to the defendants, is hereby quashed and set aside.

II. Application at Exh.49 is allowed in toto in terms of its prayer clauses.

III. Writ Petition is accordingly disposed of.

IV. In the circumstances, there shall be no order as to costs.

**( V.K. JADHAV, J. )**

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