

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

918 WRIT PETITION NO. 9734 OF 2015

GAURAV CHANDRAKANT MACHALE THROUGH POWER
OF ATTORNEY HOLDER VAIBHAV CHANDRAKANT M
VERSUS
SHAILESH CHANDRAKANT SALVE AND OTHERS

Shri. S.H. Panchal, Advocate, holding for Shri. V.B. Garud,
Advocate, for petitioner.

Shri. B.A. Dhengle, Advocate, for respondent Nos.1 & 2.

Shri. R.R. Imale, Advocate, for respondent Nos.3 to 5.

CORAM: T.V. NALAWADE, J.

DATE : 22 DECEMBER 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibit 68 in Regular Civil Suit No.383/2011 by the learned Civil Judge, Senior Division, Aurangabad. Both the sides are heard.

2) The suit was initially filed for relief of declaration that sale deed executed by defendant No.2 in favour of defendant No.1 is not binding on the plaintiffs and relief of possession was also claimed by contending

that the suit property was the ancestral property and the plaintiffs have share in the property. It appears that evidence is given by both the sides and even the defendants had closed his evidence on 12-2-2015. After that the aforesaid application came to be filed for amendment. By making amendment plaintiffs want to contend that they are entitled to the area of 2 acres 9 gunthas in view of their share. They want to contend that they have 1/5th share. In prayer clause the plaintiffs want that decree needs to be sent to the Collector under section 54 of the Civil Procedure Code. They also want that as regard the limitation Article 65 of the Limitation Act is applicable in respect of the relief claimed by them.

3) If the original plaint is read as it is, it can be said that the plaintiffs wanted to get possession of their share. They wanted to contend and prove that the sale deed made in respect of their share is not binding on them. Though word of partition was not used in the plaint, relief of possession is claimed as share was claimed in the plaint. It can be said that the amendment sought was unnecessary. It is up to the Court to decide as to how

much share can be given to the plaintiffs. Thus unwarranted amendment is sought and it is allowed. That amendment would not change the nature of the suit. The suit was filed in the year 2011 when the sale deed was executed in the year 2010. The parties are Hindu and so there was virtually no need to specifically contend that Article 65 of the Limitation Act needs to be used in this case. Thus, apparently out of some misconception the aforesaid amendment were sought.

4) Learned counsel for the petitioner placed reliance on some observations made by the Apex Court in the case reported as **2009(1) ALL MR 471 (Vidyabai v. Padmalatha)**. The Apex Court has discussed the provision of Order 6 Rule 17 of the Civil Procedure Code and has observed that in ordinary course after filing of written statement amendment of the written statement is not to be allowed when the trial has commenced. There is no dispute over this proposition. It is already observed that application was out of misconception. The amendment has not changed the nature of the suit and no prejudice would be caused to the defendant, present petitioner due to the

said amendment. It is clear that only to protract the decision of the matter, present petition is filed. The petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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