

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

911 WRIT PETITION NO. 10307 OF 2016

AMBADAS MOHAN KARPE
VERSUS
PRABHAVATI NARAYAN TAMBE AND OTHERS

Shri. Ajit B. Gaikwad-Patil, Advocate, for petitioner.

CORAM: T.V. NALAWADE, J.

DATE : 6 OCTOBER 2016

ORDER:

1) The petition is filed to challenge the order made on Exhibit 61 in Regular Civil Suit No.350/2011 which is pending in the Court of the Civil Judge, Junior Division, Paithan. Heard learned counsel for the petitioner.

2) The suit is filed for partition by respondent No.1. Petitioner is real brother of respondent No.1 and other respondents are other sisters of the petitioner. It is the case of the plaintiff that partition has not taken place and she is entitled to have share as a sister in the property. In the written statement, present petitioner contended that partition had taken place in the year 1974

between him and his brother, deceased Ashok and so partition cannot be made again. Another defence was taken that legal representatives of Ashok who died in the year 1980 were not made party defendants in the suit and the suit was not tenable.

3) It appears that after leading evidence the application for amendment was made and the plaintiff prayed for adding legal representatives of Ashok as party defendants in the suit and to add the property which was shown to be given to Ashok in partition as the suit property. This application is allowed subject of payment of cost of Rs.1000/-.

4) Learned counsel for the petitioner submitted that the issue regarding non joinder of necessary party was framed by the trial Court but no steps were taken by plaintiff after filing of the written statement and even after framing of the issues, no due diligence was shown. Learned counsel for the petitioner placed reliance on the cases reported as **AIR 2008 SC 2234 (Chander Kanta Bansal v. Rajinder Singh Anand)**; and, **2016(1) Bom.C.R. 17 Bombay High Court (Suhas v. Durgadas)**. He submitted

that observations are made by the Apex Court and this Court that for making amendment in the plaint due diligence needs to be shown and as in the present matter, application was moved after recording of the evidence, the application was not tenable.

5) Relevant contentions of both the sides are quoted. Admittedly no share was given to the sister in the partition which took place in the year 1974. Further Ashok died in the year 1980. It is a suit for partition and it is not disputed that no share is given to the plaintiff. It cannot be said that the plaintiff was not entitled to make legal representatives of Ashok party defendants in the suit. In view of the facts and circumstances of the present matter, this Court holds that no prejudice will be caused to the defendant, present petitioner if amendment is allowed and the legal representatives of Ashok are added and the property shown to be given to Ashok is also added as the suit property. There is no possibility of interference in the order made by the trial Court. The petition is dismissed.

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

rs1