

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

WRIT PETITION NO. 9931 OF 2013

1. Smt. Bharati w/o Dinesh Bari
Age - 37 years, occup. Household,
2. Ku. Pallavi Dinesh Bari,
Age - 16 years, occup. Education,
3. Ku. Sapna Dinesh Bari,
Age- 11 years, occup. Education,
4. Pradip Dinesh Bari,
Age - 15 years, occup. Education,

All are R/o rath Chowk, Pimprala,
Jalgaon, Tq. and Dist. Jalgaon,

[Petitioner no. 2 to 4 minor under
guardianship of petitioner no. 1]

.. Petitioners

versus

1. Prakash Ramdas Bari,
Age - 57 years, occup. Farm Worker,
2. Devidas Ramdas Bari,
Age - 52 years, occup. Farm Worker,
3. Sudhakar Ramdas Bari,
Age - 46 years, occup. Farm Worker,

Respondents no. 1 to 3 are r/of
Bariwada, Rath Chowk, Pimprala,
Jalgaon, Tq. and Dist. Jalgaon

4. Smt. Sundarbai w/o Ramesh Nagpure,
Age - 61 years, occup. Household,
R/o A/p Kuha Panche, Tq. Bhusawal,
Dist. Jalgaon

5. Sau. Padmabai Chhabildas Khade,
Age 59 yers, occup. Household,
R/o Vitthal Peth, Jalgaon,
Tq. and Dist. Jalgaon

.. Respondents

Mr. Sanesh Patil, Advocate for petitioners
Mr. A. N. Nagargoje, Advocate for respondent no. 5

CORAM : SUNIL P. DESHMUKH, J.
DATE : 4th August, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, by consent.

2. This is a petition, directed against order dated 15-10-2013 passed by the 6th Joint Civil Judge, Junior Division, Jalgaon, rejecting application Exhibit - 17 filed by present petitioners-plaintiffs seeking amendment to plaint in regular civil suit no. 80 of 2013 instituted by them for partition and separate possession of properties which are more particularly referred to and described in the plaint, including the one bearing Gut no. 185 situated at village Pimprala in taluka and district Jalgaon, to the extent, ad-measuring about 57 aar.

3. While the petitioners appear to be wife and children of deceased Dinesh Bari who was brother of defendants no. 1 to 4, the property appears to have been claimed to be ancestral and as such, after death of Dinesh, to his share petitioners - plaintiffs claim to have succeeded. Defendant no. 4 appears to be their sister and defendant no. 5 is the purchaser of aforesaid

area in land Gut no. 185 while it was bearing agricultural character way back in 1998 under a registered sale deed.

4. While the suit was instituted claiming partition of properties, including aforesaid land, it had been referred to be bearing the character as agricultural land. Suit has been instituted on 27-02-2013. However, as the suit progressed, it was realized by the plaintiffs that the suit land had been converted for non agricultural use in the year 2000.

5. Upon noticing aforesaid, application Exhibit - 17 had been filed by plaintiffs seeking necessary correction in the plaint about description of character of the suit land and a further description since it appears that several plots have been carved out by defendant no. 5 in the same.

6. Exhibit-17 had been resisted by defendant no. 5 – present respondent no. 5, stating that, as a matter of fact, 7 x 12 extracts were obtained before institution of the suit and those were depicting that the land concerned had been converted into non agricultural use. It is contended that in spite of being so aware, plaintiffs went on to institute the suit and if the desired amendment under the application is allowed, it would change nature of suit while presently it has been a suit for partition of agricultural land, after amendment, it would be converted into a

suit seeking partition of land put to non agricultural use. Application was resisted also on the ground that such an amendment would cause alteration even in the valuation of the suit and in that case the court may not have pecuniary jurisdiction to try the same.

7. Perusal of the impugned order shows that the court has considered that the land had been converted into non agricultural user in the year 2000 and suit had been instituted in 2013 and as such, it would be difficult to appreciate that the suit had been instituted in haste and that it was not realized that the land concerned had ceased to be an agricultural land. The trial court has also considered that since seventeen plots have been carved out from the suit land, those plots would have different boundaries and as such, description of the property would also undergo change. Simultaneously, it has also been considered that even the valuation of suit would undergo change. In the circumstances, the court has considered that although the trial of the suit has yet not commenced, the nature of the suit would undergo change and thus went on to reject the application and as such, plaintiffs are before this court under the writ petition.

8. Learned counsel for petitioners contends that the considerations which have weighed with the trial court have

been under an erroneous conception and appreciation of the matter. Learned counsel submits that as far as the area of the suit land and its' outer boundaries are concerned, it is absolutely not going to be changed under the amendment sought, for, as far as 57 aar area from the land is concerned, the dispute about said area would remain the same. Seventeen plots carved out would holistically show the same boundaries. If valuation gets changed after amendment is allowed, that would not be a consideration germane for refusing amendment sought. He submits that it cannot be said that the court can grant amendment only if it has jurisdiction to deal with the matter upon amendment. He submits that the nature of suit would absolutely not be changed as claimed by defendants, for, suit would continue to be suit for partition and possession of the properties. He submits that the trial court has misdirected itself while enquiring into and rejecting application Exhibit-17.

9. On the other hand, Mr. Nagargoje, learned counsel appearing on behalf of respondent no. 5-purchaser of suit land contends that the whole of the suit is unrealistic one, for, entire gut no. 185 had been dealt with during lifetime of Dinesh - husband of petitioner no. 1 and father of rest of the petitioners. In fact, when he was alive, he had not been aggrieved and had not proceeded against sale of the property way back in 1998 in

favour of defendant no. 5. Ten years down after his death, present suit has been instituted in the year 2013. According to learned counsel, suit instituted in 2013 is barred by law of limitation and also on other grounds. Registered sale deed in favour of defendant no. 5 is executed in 1998. He submits that the valuation of the suit would undergo change and the court, after granting amendment as has been sought, would not have jurisdiction. Further, he contends that the nature of the suit also would undergo change, for, suit would be in respect of the land put to non agricultural use and not for partition of agricultural land as had been initially sought by the plaintiffs.

10. I have heard learned counsel for the parties. Upon perusal of the order impugned, it appears that the plaintiffs are wife and children of deceased brother of defendants no. 1 to 4 and that apart from gut no.185, there is yet another property of which also partition has been sought.

11. Whether the land is a agricultural land or has been put to non agricultural use, the right and partition as claimed in respect of the same would be assessed based upon evidence. As such, change in description of character of the land as it is presently bearing, is unlikely to adversely affect the character of the right claimed by the petitioners by seeking partition and separate

possession of the land. It does not appear that merely by change of description of land, the nature of the suit can be said to be altered. Change in valuation, change in description of the land would seldom be a material which would be able to refrain the court from passing order granting amendment. As far as amendment is concerned, the courts normally are supposed to approach liberally.

12. Here, in present matter, the widow and her children have instituted a suit for partition and separate possession. Suit is of the year 2013. Application is also filed in 2013. Further, the trial in the suit is yet to commence. In the circumstances, the view and the perspective taken for appreciation by the trial court appears to be incongruous with general position of law. In any case, if the amendment sought by plaintiffs is allowed, defendant no. 5's claimed right will have to be defended, including if she has filed written statement, she will have to be allowed to amend the same consequent upon amendment to the plaint. As far as defence, including point with regard to limitation as has been canvassed by learned counsel Mr. Nagargoje for respondent no.5 is concerned, it does not appear that such a defence is forbidden.

13. In the circumstances, writ petition is allowed. Impugned order dated 15-10-2013 passed by the 6th Joint Civil Judge, Junior Division, Jalgaon, rejecting application Exhibit - 17 in regular civil suit no. 80 of 2013 stands set aside. Application Exhibit-17 stands allowed. If upon amendment, it is found that the court where the suit is instituted does not have jurisdiction, the court may pass appropriate orders in accordance with law.

14. Rule made absolute in aforesaid terms.

SUNIL P. DESHMUKH,
JUDGE

pnd