

IN THE HIGH COURT OF JUDICATURE AT MUMBAI  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.2610 OF 2016

Sukhdeo Vishnu Aaglave and others                      ...      Petitioners  
Vs.  
Shivaji Rangnath Aaglave and others                      ...      Respondents

Mr. Gajanan M. Savagave for Petitioners.

**CORAM : R. G. KETKAR, J.**  
**DATE : APRIL 13, 2016**

**P.C. :**

Heard Mr. Savagave, learned Counsel for petitioners.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 01.01.2016 passed by the 3<sup>rd</sup> Joint Civil Judge, Junior Division, Barshi below exhibit-37 in Regular Civil Suit No.833 of 2011. By that order, the learned trial Judge allowed the application made by the respondent No.1 under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the plaint.

3. Respondent No.1, hereinafter referred to as plaintiff, has instituted Suit inter alia for partition and separate possession of his 1/4<sup>th</sup> share among other prayers. During the pendency of the Suit, he took out application under Order VI, Rule 17 of C.P.C. on 13.10.2014 for amending the plaint. Petitioners filed reply resisting the application inter alia contending that the application is hit by Order II, Rule 2 of C.P.C. and by the proposed amendment, nature of the Suit changes. Plaintiff was aware of the facts which are proposed to be brought on record and therefore, is not entitled to amend the plaint. By the impugned order, the learned trial Judge allowed the application.

4. In support of this Petition, Mr. Savagave reiterated the submissions advanced before the trial Court. He further invited my attention to paragraph (F) of the proposed amendment wherein plaintiff in fact specifically contended that on 28.04.2003, Partition Deed was executed among the parties. Thus, if the partition is already effected, plaintiff is not entitled to amend the plaint.

5. I have considered the submissions advanced by Mr. Savagave. I have also perused the material on record. As noted earlier, Suit is instituted for partition and separate possession of 1/4<sup>th</sup> share. Prima facie, there is no bar of Order II, Rule 2 of C.P.C. Apart from that, perusal of the proposed amendment shows that it is purely interlocutory in nature and does not change the nature of the Suit. The suit essentially remains Suit for partition and separate possession of 1/4<sup>th</sup> share. Perusal of the proposed paragraph (F) shows that plaintiff asserted that Deed of Partition was executed on 28.04.2003. However, the parties cultivated the suit properties jointly and the Partition Deed was not implemented.

6. In view thereof, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

**(R. G. KETKAR, J.)**