

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4325/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Ms. Gauri Jadhav i/b. Tushar Jadhav for the petitioner

Mr. R. D. Soni with Sachin Khandagale with V. R. Kadle i/b. Ram & CO. for the respondent Nos.2 and 3.

CORAM : K. K. TATED, J.

DATE : JUNE 24, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner plaintiff challenges the order dated 18.02.2015 passed by the 2nd Jt. Civil Judge, Senior Division below Exhibit- 138 in Special Civil Suit No. 603/2013 rejecting the plaintiff's application for carrying out amendment in the plaint.

2. In the present proceedings, the plaintiff filed Special Civil Suit No. 603/2012 for partition and separate possession and perpetual injunction. By way of an amendment, the plaintiff seeks to add additional prayer claiming compensation of Rs.1crore with interest @ 18% p.a.

3. It is to be noted that in the original suit, the plaintiff has claimed separate possession only. Apart from that the Trial Court specifically stated in paragraph 2 and 5 of the impugned order that the suit was part-heard. The plaintiff filed his affidavit of evidence. His cross-examination was also over. Thereafter, the plaintiff filed application for amendment.

4. The learned counsel for the plaintiff submits that the Trial Court failed to appreciate the fact that, in case it is not possible to give a separate share in the suit property, then the plaintiff is entitled to at least compensation. Hence, the Trial Court ought to have considered these facts at the time of deciding their application for carrying out appropriate amendment. In support of this, she relies on a judgment of the apex court in the matter of *Mahila Ramkali Devi & Ors. Vs. Nandram 2015 (13) SCC Court 132* and of this court in the matter of Ashok *Teofilo Vaz and Ors. State of Goa 2015(1) Mh.L.J. 197*.

5. Both the authorities cited by the plaintiff are not applicable in the facts and circumstance of the present case. The apex court allowed the

application under Order VI Rule 17 of the Code of Civil Procedure, 1908 for carrying out amendment to the effect of recording name of minor sons. Whereas, in the matter of Ashok Vaz (supra) this court held that if an amendment is necessary in the interest of justice to decide the controversy between the parties, then only the amendment can be allowed. This authority is also not applicable in the present case.

6. In the case in hand, the plaintiff filed the suit for partition, separate possession and injunction and by way of amendment, the plaintiff wants to add fresh prayer claiming compensation of Rs.1 crore with cost that too when the trial has begun.

7. Considering these facts and the reasons given by the Trial Court, I do not find any reason to interfere with the impugned order dated 18.2.2015 passed by the Trial Court below Exhibit- 18 in Special Civil Suit No.603/2012. Hence, the Writ Petition stands rejected.

JUDGE