

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

WRIT PETITION NO.12178/2012

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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Mr. M. S. Athalye i/b. V. A. Shastry for the petitioner

Mr. P. S. Gole for the Respondent No.4.

CORAM : K. K. TATED, J.

DATE : JULY 26, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner plaintiff challenges the order dated 22.10.2012 passed by the 2nd Jt. Civil Judge, Junior Division Satara below Exhibit-56 in Regular Civil Suit No. 86/2010 rejecting the application made by the plaintiff for joining the co-owner whose name appears on 7/12 extract, as party respondents.

2. The Trial Court held that the respondent defendant filed written statement and raised objection for non joinder of necessary parties. After more than two and half years, the plaintiff has made the application for joining co-owners as party defendant in a suit for partition of HUF

property. The Trial Court held that in a partition of HUF property, the co-parceners are necessary party and there is no need to join other persons whose names are shown on 7/12 extract.

3. The learned counsel for the petitioner plaintiff submits that the Trial Court failed to consider the fact that at the time of partition, if a co-owner raises any objection, then the matter may be delayed. He submits that the Trial Court erred in coming to the conclusion that there was delay on the part of the petitioner plaintiff to make application for joining co-owner as party defendant in the suit. Hence, the order passed by the Trial Court is required to be set aside.

4. On other other hand, the learned counsel for the respondent No.4 vehemently opposed the Writ Petition. He submits that the Trial Court has considered the fact that to avoid cross-examination, the plaintiff made the present application below Exhibit- 56. He submits that once the trial begins, there is no question of allowing the plaintiff to carry out amendment in the plaint. He submits that if the amendment is allowed, the entire nature of the suit would change and that is not permissible under Order VI Rule 17

of the Code of Civil Procedure, 1908. Hence, there is no substance in the Writ Petition. Same be dismissed.

5. It is to be noted that in the present proceedings, the Writ Petition is liable to be dismissed on following grounds:

i) The petitioner has not made the co-owner as party respondent (proposed defendants) in the proceedings.

ii) The application made by the petitioner plaintiff for carrying out amendment in the plaint for joining co-owner of the suit property when the trial begun.

iii) Apart from that the defendant filed written statement and raised objection about the non joinder of necessary party.

iv) After more than two and half years, the petitioner has made the application below Exhibit- 56 without explaining the delay.

6. Considering the above mentioned facts, I do not find any substance in the Writ Petition. Same stands rejected.

JUDGE