

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

WRIT PETITION NO. 3811 OF 2016

Janabai Murlidhar Shinde and Others

..PETITIONERS

VERSUS

Nilesh Bhausahab Langde and Others

..RESPONDENTS

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Mr. D.G. Nagode, Advocate for petitioners.

Mr. R.S. Kasar, Advocate for Respondent No.1.

Mr. R.B. Temak, Advocate for Respondent No. 3 and 8.

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 26th JULY, 2017

ORDER :

1. The petitioners are aggrieved by the order dated 18th January, 2016 by which application Exhibit 58 seeking leave to amend under Order 6 Rule 17 of the Code of Civil Procedure has been rejected.

2. The petitioners contend that earlier it was only Plaintiff No.1 who had filed Regular Civil Suit No. 430 of 2012 for seeking a declaration that the sale deed is not binding upon her. Injunction was also sought. Subsequently, Plaintiff Nos. 2 to 4 had moved an application Exhibit 46 for a direction to be added as defendants in the said suit. By order dated 14th April, 2014, Exhibit 46 was allowed and they were added as defendants. Subsequently, they filed

application Exhibit 52 stating that they should be transposed as plaintiffs. By order dated 23rd September, 2015, the said application was allowed and they were transposed as Plaintiff Nos. 2 to 4.

3. Application Exhibit 58 has been filed by Plaintiff Nos. 2 to 4 seeking leave to introduce the proposed paragraphs set out in the said application and consequent prayers. I have gone through the said prayers and the proposed amendments. The Trial Court has rejected Exhibit 58 on the ground that the suit was filed for declaration that the sale deed is not binding on the plaintiff – Janabai. Introducing a cause of action for seeking partition and separate possession in the ancestral property would change the entire nature of the cause of action.

4. The learned Counsel for the petitioners strenuously submits that no harm or loss would be caused to the defendants as they would be in a position to counter the claims of the plaintiffs.

5. The learned Counsel for the respondents submits that it is not a matter as to whether any hardship or inconvenience would be caused. Issue is whether a completely different cause of action can be permitted to be introduced by an amendment. He submits that the proposed amendment can be

a subject matter of a separate suit, however, such a suit would now be barred by limitation and hence the plaintiffs are intending to bypass the law of limitation for introducing the cause of action which is otherwise directly prohibited by the law of limitation.

6. It is obvious from the proposed paragraphs and the prayers set out in the application for amendment application Exhibit 58 that a different cause of action is sought to be introduced by Plaintiff Nos. 2 to 4. In the event they desire to seek partition and separate possession of the ancestral property, they can file a suit, if permissible in law and if not barred by limitation. The said cause of action cannot be introduced in a suit which is for an altogether different purpose.

7. Considering the above, I do not find that the Trial Court has committed any error in rejecting application Exhibit 58. The order does not appear to be perverse and erroneous.

8. This petition being devoid of merits is therefore dismissed.

(RAVINDRA V GHUGE, J.)

SSD