

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

WRIT PETITION NO. 2827 OF 2016

SARTHAK JANARDHAN TAKALE AND OTHERS
VERSUS
JANARDHAN RAMKRISHNA TAKALE AND OTHERS

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Advocate for the Petitioners : Shri Thombre Bhagwan V.

Advocate for Respondents 1 to 3 : Shri N.C.Garud.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 11th December, 2017

Per Court:

1 The Petitioners, by this petition, seek to challenge the order dated 16.11.2015 passed by the Trial Court thereby, rejecting the application Exhibit-78 in RCS No.151/2011, seeking leave to add/ include two houses as suit properties in the said pending suit.

2 I have considered the strenuous submissions of the learned Advocates for the Petitioners and Respondent Nos.1, 2 and 3. Respondent Nos.4 and 5, though served, have not chosen to enter an appearance in the matter.

3 Petitioner Nos.1 and 2 are minor son and daughter of Petitioner No.3/ original Plaintiff. Respondent No.1, who is original Defendant No.1, is an estranged husband of Petitioner No.3 and biological

father of Petitioner Nos.1 and 2. Respondent Nos.2 and 3 are parents-in-law of Petitioner No.3/ Plaintiff and Respondent Nos.4 and 5 are said to be close relatives.

4 The contention of the Petitioners is that Petitioner No.3/wife was driven out of her marital home by Respondent No.1/ husband along with two minor children on 22.05.2010. She, therefore, decided to seek partition and separate possession of the suit properties as they are ancestral properties. Whichever properties known to her and within her knowledge, were included in the plaint. Subsequently, as the Plaintiff gathered some knowledge about some more ancestral properties, she preferred the application under the Right to Information Act, 2005 on 16.02.2015. Before the said information was received, she filed the application Exhibit-78 on 18.03.2015 praying for leave to add the two houses as suit properties. The Plaintiff received the information under the Right to Information Act, 2005 on 09.04.2015.

5 The contentions of the Respondents are that Exhibit-78 is silent about whether, the properties sought to be added were in existence before the filing of the suit; whether, they were constructed after the filing of the suit; whether, it is proved that the Plaintiff had no knowledge about the said properties and since the trial has commenced by framing of the issues, the proviso below Rule 17 of Order 6 does not permit any amendment to be carried out in the plaint. The learned Advocate for the

Respondents/ Defendants further strenuously submits that as Exhibit-78 was a vague application, the same has been rightly rejected by the Trial Court.

6 I have considered Order 6 Rule 17 and the proviso thereunder introduced by the amendment in 2002 in the light of the contentions of the litigating sides.

7 The Honourable Supreme Court has laid down the law in catena of judgments that the endeavour of the court should be to ensure that the ends of justice are met. Even if an amendment is sought to be carried out after the commencement of the trial, the Court must ensure as to whether, refusal to permit such amendment would result in an irreparable harm, manifest inconvenience and grave hardship to any of the litigating sides. There can be no debate that the proviso to Rule 17 was introduced to ensure that the matters are not unnecessarily delayed and amendments sought belatedly should not be permitted.

8 The suit preferred by the Plaintiff was in 2011. She is a deserted person and is said to have been driven out of her marital home along with two minor children, who are about six and nine years of age. Such a deserted wife is litigating against her husband, who is said to have driven her out. Since the suit is filed for partition and separate possession of the ancestral properties, it would cause an irreparable harm and serious prejudice to her if any property is left out.

9 It is quite probable that after the Plaintiff gathered knowledge about the two ancestral properties which are left out, the Plaintiff moved an application under the Right to Information Act, 2005 on 16.02.2015. Without waiting for the information being supplied under the Right to Information Act, she moved the application Exhibit-78 on 18.03.2015. On 09.04.2015, she was supplied with the information by the Talathi and that fortified her information about the two houses. As such, when the impugned order was passed on 16.11.2015, the information received by the Plaintiff on 09.04.2015 was before the Trial Court.

10 In my view, in matters of such nature where the properties left out of the common hotchpotch are likely to deprive the Plaintiff of valuable rights concerning the immovable properties, the Trial Court must appreciate the application filed for the purpose of addition of the properties by adopting a pragmatic approach rather than taking a pedantic view that the application is not well drafted or well worded. The Trial Court must assess whether, an irreparable harm is likely to cause to the litigating sides by refusing amendment of such nature.

11 Considering the above, this Writ Petition is allowed. The impugned order dated 16.11.2015 is quashed and set aside. The application Exhibit-78 is allowed on the following conditions:-

- (a) The Petitioners shall deposit costs of Rs.1000/- (Rupees One Thousand) before the Trial Court within SIX WEEKS from

today.

- (b) The Petitioners shall carryout amendment within the above period.
- (c) Since the Petitioners/ Plaintiffs have already tendered an affidavit in lieu of examination-in-chief, it would be permissible to the Petitioners/ Plaintiffs to file an additional affidavit in lieu of examination-in-chief keeping in view the law laid down by this Court in Banganga Cooperative Housing Society Ltd. and others vs. Vasanti Gajanan Nerurkar and others, 2015 (5) Bom. C.R. 813.
- (d) Costs to be deposited will be shared by Respondent Nos.1, 2 and 3, who have appeared in this matter, in equal proportion.

kps

(RAVINDRA V. GHUGE, J.)