

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

WRIT PETITION NO. 243 OF 2016

Yasmin Naseer Bagwan .. Petitioner

Versus

Navabbee Billal Bagwan and others .. Respondents

Shri V. P. Latange, Advocate for the Petitioner.

Shri Z. M. Pathan, Advocate for Respondent Nos. 1 to 5, 7 and 8.

**WITH
WRIT PETITION NO. 3441 OF 2016**

Navabbee Bilal Bagwan Shaikh .. Petitioner

Versus

Yasmin Nasir Bagwan and others .. Respondents

Shri Z. M. Pathan, Advocate for the Petitioner.

Shri V. P. Latange, Advocate for the Respondent No. 1.

CORAM : S. V. GANGAPURWALA , J.

DATE : 21ST APRIL, 2017.

PER COURT :

. In Writ Petition No. 243 of 2016 respondent No. 1 is original plaintiff who has filed suit for declaration and injunction. In the said suit amendment is sought by the plaintiff thereby incorporating the pleadings that tenant is not inducted

and also adding a prayer that the plaintiff should not be dispossessed.

2. In Writ Petition No. 3441 of 2016 the respondent is a plaintiff who has filed suit for possession. In the said suit the petitioner in the said writ petition/original defendant filed an application U/Sec. 10 of the Code of Civil Procedure for stay of the suit. The said application is rejected. The present writ petitions are filed against the order allowing amendment and rejecting the application U/Sec. 10 of the C. P. C.

3. I have heard Mr. Latange, the learned counsel and Mr. Pathan, the learned counsel for respective parties.

4. The parties in both the suits are same. The property involved is the same. In fact, both are counter suits. In such a circumstance it is always expedient to decide the suits together. As far as application for amendment is concerned, the said amendment application is filed prior to the stage of hearing. The trial has not commenced. The amendment which is sought to be incorporated cannot be said to be alien to the subject matter and the defendant will have every right to controvert the said averments by filing amended written statement. The said right exists in the defendant.

5. In view of the above, I do not find any reason to interfere with the order allowing amendment. As such Writ Petition No. 243 of 2016 stands dismissed.

6. The order rejecting application U/Sec. 10 C. P. C. need not be interfered with. One suit is pending in the Court of Civil Judge Senior Division and another is pending in the Court of Civil Judge Junior Division, Ahmednagar. Both suits may be clubbed and decided by the Court of Civil Judge S. D. Ahmednagar, so that both the suits can be decided simultaneously so as to avoid conflicting judgments. The parties would file application before the Principal District Judge for clubbing both the suits and to be tried by one Court. The learned Principal District Judge shall allow the said application and allot both the suits to one Court, which shall decide the suits simultaneously by a common judgment. The Writ Petition No. 3441 of 2016 is also disposed of. No costs.

[S. V. GANGAPURWALA, J.]

bsb/April 17