

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5489 OF 2013**

Smt.Madravati Popat Patane	... Petitioner
Vs.	
Shri Gulabrao Nana Patane & Ors.	... Respondents

**with
WRIT PETITION NO.5489 OF 2013**

Smt.Madravati Popat Patane	... Petitioner
Vs.	
Shri Gulabrao Nana Patane & Ors.	... Respondents

Mr.Madhav Jamdar i/b K.B. Sonwalkar for the Petitioner in both petitions
Mr.Milind Deshmukh for Resp.Nos.1, 2 and 3 in both petitions

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 21, 2017**

P.C. :

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.

2. In Writ Petition No.5489 of 2013, the order below Exhibit 31, filed under Order VI Rule 17 of the Civil Procedure Code and in Writ Petition No.5490 of 2013, the order below Exhibit 35, filed under Order I Rule 10 of the Civil Procedure Code, passed by the III Joint Civil Judge Junior Division, Malshiras, Dist. Solapur, on 17.3.2012 in Regular Civil Suit No.298 of 2003 are under

challenge. Both these petitions were filed by the petitioner/plaintiff for amendment under Order VI Rule 17 of the Civil Procedure Code.

3. The learned Counsel for the petitioner gave dates as to how the suit proceeded. The suit was filed for partition on 19.6.2003. 'No W.S.' order was passed 5.8.2003. The suit was dismissed in default on 31.7.2007. On 5.12.2007, the petitioner moved application for restoration of the suit, which was allowed on 29.6.2011 and the suit was restored on 21.11.2011. Though the order of 'no W.S.' was not set aside, the written statement was filed. On 13.12.1011, the plaintiff filed application below exhibit 31 and on 3.1.2012, she filed another application for amendment i.e., exhibit 35. The learned Counsel submitted that by exhibit 31, the petitioner/plaintiff wanted to add two properties mentioned in the description of the suit property i.e., 181/1 and 233/B/1 in the suit properties. He relied on para 1 of the plaint wherein it is specifically mentioned by the plaintiff that she has not received the property extracts of house and after obtaining the extracts, she be permitted to mention the said numbers and make the amendments. He further submitted that the said application was rejected on

17.3.2012 mainly on the ground of delay. He argued that in the written statement which was filed on 21.11.2011, the respondents have taken defence of non-joinder of necessary parties and, therefore, he filed another application for amendment of the plaint exhibit 35 for amendment of the plaint by which he sought that the mother in law and sister in law of the petitioner / plaintiff be added in the array of the party defendants. The said application was also rejected. He prays that the orders rejecting the applications is to be set aside.

4. The learned Counsel for the respondents while opposing the petitions, has submitted that there was inordinate delay in filing the applications. He further submitted that the evidence of the plaintiff is recorded and, therefore, amendments cannot be allowed.

5. Perused the plaint and the impugned orders so also the amendment applications. In the plaint, the petitioner has specifically mentioned that she be allowed to mention the suit properties and amend the description of the suit property as and when the documents would be acquired by her. As per the submissions of the learned Counsel for the respondents, the documents were acquired in 2007. No written statement was filed

for amendment of the plaint. However, it appears as per the chronology of the events that on 28.12.2003, no written statement was filed and the suit was dismissed for default in 2007. Later, it was restored and though an application for setting aside the order of dismissal was moved immediately, the suit was restored 4 years thereafter i.e., on 29.6.2011. Thus, the record shows that thereafter the suit moved speedily; written statement was filed and the amendment applications were also preferred by the petitioner/plaintiff. It does not show anywhere that when he filed these two applications below exhibits 31 and 35, as to whether the trial has commenced or not? It is submitted by the learned Counsel for the respondents that the petitioner has also moved an application for review of these orders and the said application was also rejected. However, it is not necessary for the petitioner to challenge the said order as the main orders are challenged. The said application was passed on 21.3.2013. At that time, the issues might have been settled and there would have been some progress in the suit. However, as and when the applications were filed, no affidavit of examination in chief was filed.

6. The suit is for partition filed by a widow wherein the sister-in-law and mother-in-law are proper and necessary parties having shares in the ancestral property and the amendments sought are not going to change the nature of the suit. Hence, though there is a delay, the orders passed by the learned trial Judge require to be set aside. Accordingly, the following order is passed:

- i) The impugned orders dated 17.3.2012 passed below exhibits 31 and 35 are hereby set aside.
- ii) Amendments are allowed with costs of Rs.2,500/- to be paid to each of the respondents.
- iii) The trial Court to proceed with the matter and try to endeavour to finish the matter at the earliest.
- iv) Parties to cooperate with the trial Court.

7. Rule made absolute accordingly.

(MRIDULA BHATKAR, J.)