

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3200 OF 2017

Mrs.Urmila @ Uma Vilas More & Ors. ... Petitioners

Vs.

Shri Hanmant Maruti Pawar & Ors. ... Respondents

Mr.D. D. Rananaware for the Petitioners

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 25, 2017**

P.C. :

1. This petition filed under Article 227 of the Constitution of India challenges the order dated 17.6.2016 passed by the learned District Judge 4, Satara, in Regular Civil Appeal No.261 of 2010 wherein the application for amendment of the pleadings under Order 6 Rule 7 of Civil Procedure Code was rejected. The four petitioners and respondent No.2 are real sisters and daughters of late Dinkar. They filed the suit bearing RCS No.34 of 1991 against respondent No.1 – Hanmant Maruti Pawar, who is the step brother of their father dinkar. They filed the suit for declaration that the plaintiffs are owners of the suit properties and the respondents should not disturb their peaceful possession. The

suit was dismissed by order dated 15.9.2010 against which the petitioners and the original respondents preferred Regular Civil Appeal No.261 of 2010. In the said appeal, the application was moved at exhibit 15 for amendment of the plaint on 18.3.2016. The said application was rejected and hence, this petition.

2. The learned Counsel for the Petitioners submitted that the order passed by the learned Judge is illegal and erroneous and deserves to be set aside. The learned Counsel has submitted that the petitioners have pleaded in the plaint that the respondent is a step brother of their father and by way of amendment, the plaintiffs have explained the relationship and right of the step brother of their father in their ancestral property. He further argued that the Appellate Court ought not to have considered the merits of the amendment but should have appreciated that it is a necessary amendment. He further submitted that these amendments are well within Order 6 Rule 17 of Civil Procedure Code and if this application is disallowed, the additional approach by the plaintiff, which was necessary, will be closed leading to gross prejudice to the plaintiffs. He further submitted that the suit is filed in 1991 and, therefore, the proviso to Rule 17 of Order 6 which was added by

way of amendment in 2002 w.e.f. 1.7.2002 shall not come in the way. So, it is not necessary for the plaintiffs to show due diligence as the suit is filed prior to 2002. He further argued that mutually inconsistent pleas by way of amendment also can be introduced. However, even though such contradictory stand is taken in view of the object of Order 6 rule 17, the amendment application ought to have been allowed liberally. He relied on the judgment in **Mudra Salt & Chemical Industries vs. Collector, Thane & Ors.**¹

3. Read the impugned order, the plaint and also the judgment dated 15.9.2010 thereby dismissing the suit. Considered the application for amendment of the plaint and the say given by the respondents. The suit is filed in the year 1991. At the time of considering the amendment application, the Court has to apply the 'criterion of necessary pleadings'. In the present case, the suit is filed for declaration and injunction in respect of suit land on the basis of deed of partition and also further sale deeds of the suit property by the father of the petitioners i.e., the original plaintiff in their favour. By way of amendment, the plaintiffs want to add that the respondent No.1 i.e., their uncle, was an illegitimate son of their grandfather and, therefore, he is not entitled to the ancestral

¹ 2001 (3) Mh.L.J. 151

property. It is argued that the petitioners have mentioned in the plaint that respondent No.1 was a step brother of their father. As per their case, the entire case of the petitioners is based on the family arrangement which took place on 23.2.1954 and the subsequent sale deeds.

4. The learned Counsel for the Petitioners has pointed out the family tree mentioned in the judgment in order to explain the amendment. He submitted that the mother of Hanmant Pawar, the respondent, was the second wife of Maruti Pawar. On perusal of this family tree, it is found that Kamlabai was the second wife of Maruti. After perusal of this family tree as pointed out by the learned Counsel for the petitioner, it is noticed that Maruti Pawar has expired in 1952. The present petitioners, who claim through Dinkar, are the daughters of the second wife Janabai of Dinkar, who died on 28.12.1989. In the case of **Mudra Salt & Chemical Industries Ltd. (supra)**, a learned Single Judge of this court has allowed the application for amendment in the plaint. The said suit was for declaration of title and at the time of evidence by way of amendment, the plaintiffs pleaded adverse possession and thus, raised an alternative plea. The suit based on title and adverse

possession are inconsistent pleadings and the learned Judge while allowing the said pleadings has held that the mutually inconsistent pleas are to be allowed and the reliefs founded on the alternative plea also can be granted.

5. It is true that the court has to use the full powers of amendment and it is also to be liberally exercised. However, it should appear as a necessary pleading, though under Order 6 Rule 17, the amendment can be sought at any stage of the proceedings. Under the said rule, such amendments which are just and shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Thus, in appeal also, the amendment application can be filed and can be allowed.

6. In the present matter, the application is moved at the appellate stage. In the present case the relationship is mentioned as step brother and accordingly, the defendants have filed the written statement and evidence was tendered by both the parties. Now the petitioners want to change the status of defendant No.1 as an illegitimate son. The plaintiffs in their pleadings and evidence have admitted that defendant No.1 was step brother of

their grandfather. They all being family members, this fact was very much within the knowledge of the plaintiffs at the time of filing of the complaint. Therefore, the status of the defendants cannot be displaced by taking a new case by way of amendment once the plaintiffs have already admitted the status of the defendant as step-brother and accordingly the defendant has raised contentions and led evidence. The submission of the learned Counsel that an illegitimate son and step brother are one and the same, cannot be accepted. The learned Judge has rightly not considered the merits of the amendment but has taken into account the pleadings in the plaint wherein plaintiffs have admitted the status of the defendant as a step brother of their father Dinkar. On the basis of this, the entire evidence was led by the plaintiffs and the defendants. Therefore, at this stage, the plaintiffs cannot be permitted to withdraw their admission by virtue of amendments. Moreover, considering the other pleadings and the averments made in the plaint, the amendment cannot be said as necessary pleadings within the object of Order 16 Rule 17 of the Civil Procedure Code.

7. Thus, the order passed by the learned Judge is found legal and does not require any interference. Accordingly, the Writ Petition is rejected.

(MRIDULA BHATKAR, J.)