

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

WRIT PETITION NO. 924 OF 2017

Smt.Suman Bharat Gosavi (Ramdasi) & Anr.

...Petitioners

Versus

Government of Maharashtra & Ors.

...Respondents

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Ms.Smita R.Gaidhani for the Petitioners.

Mr.Surel S.Shah for Respondent Nos. 3 to 8.

Ms. Aswini Surendran i/b. Mr.Ashok T. Gade for Respondent Nos. 9 and 10.

Ms.Jyoti Jadhav, AGP for the State.

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CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JULY 14, 2017

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.

2. This petition is directed against the order dated 01.09.2016 passed by the learned Civil Judge, Senior Division, Malshiras below Exhibit 50 in Regular Civil Suit No. 43 of 2013 thereby rejecting the application filed by the petitioners/plaintiffs under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint.

3. The petitioners/original plaintiffs had filed a Suit for declaration and injunction in respect of the suit land against the defendants. Defendant no. 1 is the Government and defendant no.2 is the Public Officer. However, defendant nos. 3 to 8 are cousins and the legal heirs of one Laxman. The Suit was filed in the year 2013. The application dated 30.03.2016 was filed by the petitioners/plaintiffs i.e. after filing of the written statement by the defendants.

4. The learned counsel for the petitioners/plaintiffs submits that after receiving the written statement, the petitioners/plaintiffs had realized that old Survey No. 430/1 of Village Mhalud, Taluka- Malshiras was allotted as Gat No. 331 by an allotment order dated 07.03.2014 passed by the Sub Divisional Officer. The petitioners/ plaintiffs were not aware of this allotment and they were not parties to the proceedings. Initially, the land i.e. Survey No. 430/1 was shown in the names of Ramkrishna and Bharat as eligible cultivators. The present petitioners/plaintiffs were claimed through Bharat as the legal heirs of Bharat. At the time of allotment of Gat No. 331 in the place of Survey No. 430/1, the names of Ramkrishna and his legal heirs appeared. The names of legal heirs of other brothers i.e. respondent nos. 3 to 8 were shown. The names of legal heirs of Laxman were also shown, but the names of the legal heirs

of Bharat were not shown. Thereafter, the mutation which was taken at Entry No. 956, however it was subsequently cancelled, after the application was moved by the petitioners before the Revenue Authority. Thus, the petitioners/plaintiffs were found that pursuant to this subsequent development, the amendment in the plaint is necessary. So they moved the application for amendment under Order VI Rule 17 of the Code of Civil Procedure.

5. The learned counsel for respondent nos. 3 to 8 submits that if the amendment is allowed, the nature of the Suit will entirely change. The reasons given in the impugned order while rejecting the application are correct and legal. The petitioners/plaintiffs have changed the description of the suit property by giving different numbers and the area. Thus the pleadings are completely changed and the added relief has changed the constitution of the Suit. He further submits that acquisition was taken place in the year 1950-51 and therefore, challenge given to the records or revenue entries, which were carried out pursuant to the Acquisition Order dated 25.03.1966 is time barred. He further submits that the properties i.e. Gat No. 1358 and Gat No. 331 are different properties and they are not one and the same.

6. Heard submissions. Perused documents. The order dated 29.07.2013 issued by the Sub Divisional Officer, Madha discloses that

at the time of allotment of Survey No. 430/1, a land number was changed or Gat No. 331 was allotted in lieu of that. *Prima-facie*, it shows that at the time of allotment, the names of the eligible cultivators were also changed from the original record. The submissions of the learned counsel for the petitioners that only after filing of the written statement, the petitioners/plaintiffs had knowledge of this change in the record, cannot be doubted at this stage. It appears that after receiving the written statement, the petitioners/plaintiffs have applied for the certified copies of the concern record and after obtaining the same and verifying the facts, the application for amendment of the plaint under Order 6 Rule 17 of the Code of Civil Procedure was filed. The learned Judge at the time of considering this application has lost the sight of the order passed by the Sub Divisional Officer, Madha. The petitioners/plaintiffs have prayed earlier for declaration of 50% of the share in the suit property and by way of an amendment, the petitioners/plaintiffs seek an alternate prayer of partition in respect of their shares in the suit property. The defendants i.e. main contesting parties are cousins and they all have received their shares in the suit property i.e. ancestral property, which is a subject matter of the Suit. In view of this, in order to avoid the multiplicity of the proceedings, the amendment is to be allowed.

7. The learned counsel for respondent nos. 3 to 8 raises the issue of limitation. The said issue can be settled by the trial Court at the time of framing of the issues and the parties may lead their evidence to that effect and a separate finding will be given by the trial Court. Hence, the order dated 01.09.2016 passed by the learned Civil Judge, Senior Division, Malshiras is set aside. Amendment is to be carried out within a period of two weeks and the written statement is to be filed within a period of four weeks. All contentions are kept open.

8. In view of the above, Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)