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

WRIT PETITION NO.3672 OF 2017

Smt. Rajubai Balaram Gaikwad	...	Petitioner
V/s.		
Datta Mhatre and ors	...	Respondents

Mr. Vijay Patil i/by Satyajeet H. Joshi, for
the Petitioner

Mr. Machindra B. Deshmukh, for the
Respondent No.1.

Mr. B. B. Sharma, for respondent Nos. 2 and
3.

Ms. Aparna Shinde and Tejashree Panchal,
for respondent No.5.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 21st DECEMBER, 2017.

P.C. :

1] Heard learned counsel for the petitioner and learned
counsel for respondent Nos.1, 2 & 3 and No.5.

2] By this petition filed under Article 227 of the Constitution
of India, the petitioner is challenging the order dated 8th July, 2016,
passed by Civil Judge Senior Division, Panvel in R.C.S. No.54 of 2008
on the application below Exh.69.

3] The said application was filed by the petitioner under
Order VI Rule 17 of the Code of Civil Procedure, for amendment in the

plaint in order to bring on record certain facts to claim certain reliefs. It was submitted that the petitioner has filed suit to establish her claim over the properties left behind by her aunt Umabai Rama Keni, who was owner of certain properties which were acquired and she has filed an application for enhancement of the said compensation bearing application L.A.R. No.814 of 2000. During pendency of petitioner's suit the said application came to be decided and respondent No.1 was, on the basis of the false and fabricated will of Umabai Rama Keni, claiming the said amount, ordered in those proceedings. Hence by this amendment in the plaint, petitioner wants to raise claim over that enhanced amount of compensation alongwith interest thereon from respondent No.1.

4] This application was resisted by the respondent No.1 herein by contending that in L.A.R.No.814 of 2000 which was pending in District Court at Alibag, the petitioner has filed similar application under Order 1 Rule 10 of Code of Civil Procedure for her impleadment and said application was pending for decision. It was also contended that if the proposed amendment is allowed, it will change the nature of the suit.

5] The trial Court, after hearing learned counsel for both parties rejected the said application on both these counts.

6] Now admittedly application which was filed by the

petitioner in L.A.R.No.814 of 2000 and which was pending there, when the trial Court has passed impugned order, is decided and disposed off. Therefore, that ground no more remains for rejection of petitioner's application for amendment

7] As regards the grievance of the respondent No.1 that if the amendment is allowed, it will change the nature of the suit, that grievance is also without any merit because the very suit is filed by the petitioner claiming to be the legal heir and successor of the property left behind by her aunt Umabai Keni. She has filed the suit for necessary declaration saying that will of Umabai Keni on which respondent No.1 has relied upon to claim heir-ship certificate or to claim 12.5% quota for allotment of plot and also for getting amount of compensation is forged one and she being the niece of Umabai is her real legal heir and is entitled for the claim over the compensation and allotment of plot under 12.5% quota.. Now by way of amendment she is only seeking enhanced amount of compensation, which ultimately came to be allowed as a result of decision in L.A.R. No.814 of 2000. Therefore, this is only the consequential or additional relief which she is seeking by way of amendment. It will neither change the nature of the suit, the real lis or crux of the suit being to decide who is real heir or successor of late Umabai Keni. Hence the finding given by the trial Court that proposed amendment will change the nature of suit is also

not correct.

8] Admittedly till now the issues in the suit are not framed and therefore, embargo of Proviso to Order VI Rule 17 is also not applicable. Therefore, if the proposed amendment is allowed, it will help to decide all the issues and controversy arising between the parties finally and effectively instead of giving rise to multiplicity of proceedings. Therefore, the impugned order passed by the trial Court rejecting the petitioner's application for amendment in the plaint needs to be quashed and set aside.

9] Accordingly writ petition is allowed.

10] The impugned order passed by the trial Court below Exh.69 is set aside. The petitioner's application for amendment of the plaint (Exh.69) is accordingly allowed. The petitioner to carry out necessary amendment within three weeks from the receipt of this order.

11] The parties to act on the authenticated copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]