

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

WRIT PETITION NO.5480 of 2018

Shivaji Eknath Dhenge & anr.

Petitioners

VERSUS

The State of Maharashtra & anr.

Respondents

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Mr. G.L. Kedar, Advocate for the petitioners

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 29th OCTOBER, 2018

PER COURT :

1 The petitioners-original defendant Nos.2 & 6 are aggrieved by the impugned order dated 05.03.2018 by which the Trial Court has allowed application Exh.53 filed by the plaintiffs seeking amendment under Order VI Rule 17 of the Code of Civil Procedure, 1908 in R.C.S. No.213/2009.

2 I have considered the strenuous submission of the learned Advocate for the petitioners. I have gone through the grounds for challenge formulated in the memo of the petition.

3 The basic grievance of the petitioners is that a sale deed is being sought to be challenged in a suit for partition and separate

possession, when admittedly the consideration amount in the sale deed is of Rs.42,00,000/-. The record reveals that the property, which is subject matter of the sale deed, is one of the suit properties and will have to be put in a common hotch pot. Further grievance of the petitioners is that as the amount of Rs.42,00,000/- is involved, the Trial Court would lose its pecuniary jurisdiction.

4 In the above backdrop I find that the observations of the Trial Court in paragraph No.11 would not call for an interference. The said observations in paragraph No.19 read as under :

“19) In the light of above rival contentions, it is necessary to mention here that the present suit is originally instituted for the partition and separate possession. By way of the proposed amendment, the plaintiff is seeking to plead the facts nullifying the alleged sale deed and consequential relief thereof. No doubt the consideration amount is shown as Rs.42,00,000/- in the sale deed. However, I am of the opinion that, it will not bar the inherent jurisdiction of the present Court to entertain the application for amendment as sought for. Because, the suit is originally instituted for the partition and separate possession of the suit property. The present court has inherent jurisdiction to decide the dispute of civil nature. It is contended by the plaintiff that she is required to seek the proposed amendment as she came to know about the alleged sale deed only after institution of the suit. Hence this court has the jurisdiction to entertain the present application as the amendment sought for is necessary for the purpose of deciding the real controversy between the parties. Moreover, question regarding whether the valuation of the suit exceeds beyond the pecuniary jurisdiction of the court or not would be determined only after the proposed amendment is allowed. Until then such question would not come in a way for deciding the present application.”

5 Considering the above, the defendants obviously have an opportunity to file their additional written statement after the plaint is amended and would therefore get a chance to raise objections keeping in view the observations of the Trial Court.

6 In this view of the matter, I do not find that the impugned order could be termed as erroneous. This petition being devoid of merits, is therefore dismissed.

[RAVINDRA V. GHUGE, J.]

Donge/-