

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

WRIT PETITION NO. 12653 OF 2017

GANGASAGAR GULABRAO JADHAV AND ANOTHER
VERSUS
HARIBHAU MANJULDAS JADHAV AND OTHERS

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Advocate for the Petitioners : Shri Kuptekar Sachin V.
Advocate for Respondent 1 : Shri Rupesh C. Bora h/f Shri R.D.Thorat.
AGP for Respondents 2 to 4 : Shri S.K.Tambe.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th June, 2018

Per Court :

1 The Petitioners, who are the original Defendant Nos.10 and 11, are aggrieved by the order dated 08.09.2017 passed by the Trial Court by which, the application Exhibit-148 filed by the Plaintiff seeking an amendment to the plaint under Order 6 Rule 17 of the Code of Civil Procedure in Regular Civil Suit No.119/2006, has been allowed subject to imposition of costs. Liberty is granted to the Defendants to file their additional Written Statement within 15 days from the date of the amendment.

2 While issuing notice on 08.11.2017, this Court has merely requested the Trial Court to adjourn the proceedings and has not stayed the impugned order.

3 I have considered the strenuous submissions of the learned
Advocates for the respective sides.

4 The learned Advocate for the Petitioners has strenuously
criticized the impugned order. Reliance is placed upon the eight grounds
formulated by him in the memo of the petition. It is a specific contention
of the Petitioners that the amendment would change the nature of the
cause of action and would cause an irreparable harm and serious
prejudice to the Petitioners/ Defendants.

5 The learned Advocate for Respondent No.1 has supported the
impugned order. He relies upon the judgments of the Honourable
Supreme Court in the matters of Chander Kanta Bansal vs. Rajinder Singh
Anand, AIR 2008 SCW 3225, Revajeetu Builders and Developers vs.
Narayanaswamy and Sons and others, (2009) 10 SCC 84, J. Samual and
others vs. Gattu Mahesh and others, 2012 (4) Mh.L.J. 40 (SC),
Chakreshwari Construction Pvt.Ltd. vs. Manohar Lal, 2017(5) Mh.L.J. 195
(SC), and the judgment of this Court in the matter of Sanjay Suganchand
Kasliwal vs. Jugalkishor Chhaganlal Tapadia and another, 2015 (5) ALL MR
101. He submits that the law is crystallized that if an amendment does not
suffer a serious handicap of due diligence and if ulterior motives are not
attributed to the conduct of the Applicant, the application for amendment
can be considered. If the amendment is germane and necessary to the

cause of action and if is likely to prevent further litigation or multiplicity of litigation, such amendment can be allowed.

6 I find from the plaint that the Plaintiff has sought the relief of declaration that he is the owner of 1/7th share of the suit property. He has sought declaration that the Will Deed bearing No.4822 of 2000 in favour of Defendant Nos.10 and 11 be declared null and void and these Defendants be restrained from interfering with the possession of the Plaintiff. In the application for seeking amendment, the Plaintiff has put forth a request for allowing him to add a prayer in the alternative to the extent that if the Trial Court comes to a conclusion that the suit property is owned by the Plaintiff along with Defendant Nos.4 to 9, his 1/7th share be demarcated and the declaration, which he has sought in the plaint, be restricted to this portion of the suit property.

7 I do not find that this prayer would change the nature of the cause of action. The Plaintiff has sought an amendment for the first time in the Trial Court though the trial in the matter has commenced and the recording of evidence is over. Considering the principles laid down by the Honourable Supreme Court in paragraph 63 of it's judgment in the matter of Revajeetu Builders and Developers (supra), I find that the prayer put forth by the Plaintiff through the amendment is by way of an alternative prayer which would neither change the cause of action nor would it cause prejudice to any of the litigating sides.

8 In the light of the above and considering that the Trial Court has permitted the amendment by imposing costs and has permitted the Defendants to file their additional written statement, the impugned order cannot be branded as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)