

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

WRIT PETITION NO. 13807 OF 2016

Mohan Baburao Lokhande	...	Petitioner
V/s.		
Baban Baburao Lokhande (Decd.)		
Through LRs.		
Sou.Shakuntala Lokhande & Ors.	...	Respondents

Mr.Vaibhav R. Gaikwad for the Petitioner.
Mr.Madhav J. Jamdar for Respondent Nos.15A to 15D.
Mr.Amit A. Karande for Respondent Nos.2,13,14 and 16.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th JANUARY, 2018.

P.C. :

1] Heard learned counsel for both the parties.

2] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 1st March, 2016, passed by Civil Judge Junior Division, Phaltan, below Exhibit-389 in Regular Civil Suit No.113 of 2007. The said application was preferred by the present Petitioner seeking amendment under Order-VI Rule 17 of Civil Procedure Code for addition of certain

properties and making it clear that he does not want to claim any relief of partition in respect of the said properties.

3] It is submitted by learned counsel for the Petitioner that as the suit is filed by the Petitioner for partition and separate possession of his share in the joint family property, all the joint family properties were necessary to be included in the suit claim. However, due to inadvertence, certain properties which are described in the proposed application for amendment in paragraph No.(2) from 1F to 1G remained to be included in the plaint and hence, the Petitioner may be permitted to add these properties. Further, it is submitted that, as the Petitioner does not intend to claim any partition on those properties, the necessary amendment to that effect may also be permitted in the plaint.

4] The trial Court has rejected this application in view of the objection raised by learned counsel for the Respondents on the ground of delay and lack of due diligence, in the light of the Proviso to Order-VI Rule-17 of C.P.C., which requires that, once the trial has commenced, no Court shall allow the application of the amendment of the pleadings, unless the party making such application has shown that

despite due diligence such amendment could not have been sought earlier.

5] Learned counsel for the Petitioner, in this respect, relies upon the judgment of this Court in the case of *Rajbahaddur Jiyaram Yadav vs. Prakash @ Pappu Jiyaram Yadav & Ors.*, 2016(2) Mh.L.J. 639, submitting that, by imposing appropriate costs and irrespective of proviso to Order-VI Rule-17 of C.P.C., he has no objection to allow the proposed amendment, as sought by the Petitioner.

6] In view thereof, as the proposed amendment is necessary for deciding the actual controversy involved between the parties finally and completely, in the interest of justice, the proposed amendment is allowed.

7] However, as it is sought at the belated stage, when the trial has already commenced, as held in the above said judgment of this Court, the amendment needs to be allowed, subject to costs.

8] Accordingly, the Writ Petition is allowed and the impugned order passed by the trial Court is quashed and set-aside.

9] The Application filed by the Petitioner at Exhibit 389 for amendment of the plaint is allowed subject to the payment of costs of Rs.10,000/- (Rs. Ten Thousand only) by the Petitioner to the contesting Respondents within a period of two weeks from the date of receipt of this order. The costs to be deposited in the trial Court within two weeks and the amendment to be carried out thereafter within one week.

10] Writ Petition is disposed of in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]