

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

WRIT PETITION NO. 11263 OF 2016

Shri. Pandit Malhari Mahale

... Petitioner

V/s.

Monika Pandit Mahale and Ors.

... Respondents

Mr. Sugandh Deshmukh for the Petitioner.

Mr. Girish Agrawal for the Respondent Nos. 1 to 3.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 14th AUGUST, 2018

P.C.:

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

2 By invoking the writ jurisdiction of this Court under Article 227 of the Constitution of India, this petition is filed wherein the Order dated 09.03.2016 passed by the learned Civil Judge, Senior Division, Niphad thereby allowing the application of the Respondents/Plaintiffs for amendment of the plaint, is challenged. The Respondents/Plaintiffs who are wife and children of the Petitioner-husband/father have filed a suit for partition. They claimed that suit property is an ancestral and HUF property. The Plaintiff Nos. 1 and 2 were minor

i.e. 12 and 14 years old, when Special Civil Suit No. 15 of 2008 was filed. However, as per the case of the Plaintiffs, when Plaintiff Nos. 1 and 2 became major in the year 2011 and 2013, they moved the application for amendment of the plaint in the year 2015. By way of amendment, the Plaintiffs wanted to insert proposed paragraph No. 4(b) wherein they wanted to make specific averments that the land or property purchased by the husband/father in his name are purchased out of HUF income.

3 The learned Counsel for the Petitioner/original Defendant has submitted that the Plaintiffs have filed Affidavit of Examination-in-Chief and thereafter, this application was made. The learned Counsel for the Petitioner submitted that as per the Judgment of the Supreme Court in the case of *Vidyabai and others and Padmlatha and Anr., reported in (2009) 2 Supreme Court Cases 409*. It is necessary for the party seeking amendment to show due diligence by virtue of proviso appended to Order VI Rule 17. There is no diligence is shown in this case. Hence, the Order dated 09.03.2016 passed by Civil Judge, Senior Division, Niphad be set aside.

4 The learned Counsel Mr. Agrawal for the Respondents/ Plaintiffs has submitted that Plaintiff Nos. 1 and 2 after attaining majority have realised that certain facts should be explained further and the application for amendment was

due. He has submitted that after the order dated 09.03.2016 was passed allowing the amendment, the petitioner/defendant also moved an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of the written statement which was allowed on 26.04.2016. He further submitted that additional issues were settled on 16.06.2016. He further submitted that evidence of the Plaintiffs is over and in the present petition an interim stay was granted by this Court by an Order dated 25.09.2017 and therefore, evidence of the defendant could not be recorded further.

5 Perused the impugned order, the plaint and the proposed amendment. In view of the submissions of learned Counsel for the Respondents, I am of the view that no interference is required in the order. The defendant has also filed additional written statement and it was allowed on 26.04.2016. Additional issue is framed and plaintiffs have led evidence who was also cross examined. Hence, in fact, the order of interim relief dated 25.09.2017 passed by this Court was not effective. The submissions of learned Counsel for the petitioners that if, he succeeds in this petition, then the order of allowing additional written statement, evidence of the plaintiff, everything will go away and matter to be restored at the stage and on the date when the order was challenged. These submissions are absurd as the interim stay was granted at the very late stage when the matter was already traveled and the defendants themselves have submitted to the orders

passed by the Trial Court and have taken steps of filing the additional written statement.

6 Under these circumstances, no interference is required in the Order dated 09.03.2016 passed by Civil Judge, Senior Division, Niphad.

7 Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)