

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11265 OF 2017

Ramchandra Arjun Fulsundar (Since Deceased),
Through Vasant @ Anil R. Fulsundar & Ors. Petitioners
V/s.
Satyashila Bharat Yadav Respondent

Mr. Prabhakar M. Jadhav for the Petitioners.

Mr. Amit Munde for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 26TH MARCH, 2018.

P.C. :

1. Heard Mr. Jadhav, learned counsel for the Petitioners, and Mr. Munde, learned counsel for the Respondent.
2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 30th June 2017 passed by the 2nd Joint Civil Judge, Junior Division, Indapur, below the application at “Exhibit-148” in Regular Civil Suit No.193 of 2007.
3. The application at “Exhibit-148” was filed by the Respondent, who is Original Plaintiff before the Trial Court, for amendment of her plaint, under Order 6 Rule 17 of the Code of Civil Procedure, 1908, in order to

implead the name of her mother Phulabai as party to the Suit. The Trial Court has allowed the said application and hence, the instant Writ Petition.

4. The submission of learned counsel for the Petitioners is that, in this case, the application for amendment is filed at the belated stage, when the Suit is fixed for final arguments. In support of this submission, he has produced on record a copy of the 'Roznama' of the Trial Court to point out that, the Suit in this case was filed in the year 2007; issues were framed in the year 2011; on 2nd March 2013, Respondent has filed 'pursis' closing her evidence; thereafter, in the year 2014, the evidence of the Petitioners was commenced and the said evidence was also closed on 19th October 2016; the matter was posted for final arguments; for two dates it was adjourned and then on the third date, the Respondent has filed this application. Therefore, it is urged that, the application for amendment being filed at a very belated stage, the Proviso to Order 6 Rule 17 of CPC has come into play and hence, the Trial Court should not have allowed such application for amendment.

5. Secondly, it is submitted that, in the plaint, Respondent has categorically made a statement in paragraph No.1 that, as her mother Phulabai has re-married with another person, after the death of Respondent's father Vasant, Phulabai has ceased her status and right in the family of Vasant. Therefore, it is submitted that, when Respondent

herself has stated that Phulabai has no right to claim any share in the property of the Petitioners' father, her impleadment should not have been allowed.

6. Thirdly, it is submitted that, Phulabai was also examined in this case in the year 2012 as a 'witness' on behalf of the Respondent and at that time also, no such application for amendment of the plaint was made.

7. Thus, in sum and substance, the submission of learned counsel for the Petitioners is that, such application for amendment being not considered properly by the Trial Court and it has allowed the same in a casual manner, the impugned order passed by the Trial Court needs to be quashed and set aside.

8. However, the facts of this case clearly go to show that, the Suit, which was filed by the Respondent before the Trial Court, was for partition of her share in the joint family property of her father. It may be true that, in the plaint, she has stated that as her mother Phulabai had performed marriage with another person, after the death of Petitioners' father, Phulabai is ceased to be having any right or share in the property of deceased Vasant, however, in her application for amendment of the plaint, she has categorically stated that, in view of repeal of Section 24 of the Hindu Succession Act, in pursuance of the Amendment Act of 2005,

now she has realized that Phulabai is also having a right and share in the property of deceased Vasant. According to her further averments made in the application for amendment, she has stated that, due to lack of knowledge on her part about the legal provisions, though the amended Hindu Succession Act was brought on record even prior to the filing of the Suit, she could not implead Phulabai in the Suit. Thus, she has given explanation as to why Phulabai was not impleaded in the Suit at an earlier stage.

9. Needless to state that, this being an adversarial legal system, it is the Advocate who drafts the plaint and not the litigant. Therefore, if the Advocate of the Respondent failed to implead Phulabai in the Suit, Respondent should not suffer. Especially when it is held that, Phulabai is having now the legal right in the property of deceased Vasant, in view of the amendment in the Hindu Succession Act, then, it follows that, Respondent's Suit for partition will also suffer for non-joinder of necessary party.

10. Moreover, if the parties are fighting the litigation since the year 2007, then, it is expected that such litigation should be decided finally on merits, completely and effectually deciding the rights of the parties. If, therefore, the impleadment of Phulabai is not allowed and the Suit comes to be dismissed on technical ground for non-joinder of necessary party, it is the Respondent, who will suffer the loss and hardship and

Petitioner will also be subjected to another round of litigation, which may be filed by Phulabai and also by the Respondent. Therefore, to put an end to the controversy raised between the parties since last more than a decade, even at this belated stage also, the Trial Court has rightly held that the impleadment of Phulabai is necessary.

11. Learned counsel for the Respondent also fairly concedes that, even after the proposed amendment for impleadment of Phulabai in the Suit, Respondent does not intend to lead any oral or documentary evidence. In view thereof, the litigation is not going to be protracted in any way. It is only for the Petitioners to decide whether they want to cross-examine the Respondent or Phulabai on the aspect of this proposed amendment; otherwise, the Suit can definitely be proceeded further from the stage of the final arguments and it can be disposed of at the earliest. Therefore, in this respect also, there is no question of prejudice being caused to the Petitioners.

12. The impugned order, therefore, passed by the Trial Court does not call for any interference. Writ Petition, accordingly, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]