

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

WRIT PETITION NO. 10920 OF 2011

Shri. Suresh Vilas Nikam

...Petitioner

Versus

Smt. Sonabai Vishnu Mahiman & Ors.

...Respondents

.....
Mr. A.M. Kulkarni a/w. Mr. Sarthak Diwan for the Petitioner.
Mr. Pratap Patil for Respondent No.1.
.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JUNE 14, 2018**

P.C. :

1. This Writ Petition is filed invoking the Writ Jurisdiction of this Court under Article 227 of the Constitution of India taking exception to the order dated 29th September, 2011 passed by the learned Jt. Civil Judge, Junior Division, Islampur thereby partly rejecting the application below Exhibit 104 in Regular Civil Suit No. 351 of 2006.

2. The petitioner is original defendant no. 5 and respondent no. 1 is original plaintiff. The plaintiff has filed a suit for partition and possession. After hearing the suit, when the matter was fixed

for pronouncement of the judgment, the learned Judge of the trial Court himself impleaded defendant nos. 6 and 7, who are the sisters of the plaintiff's husband, in the suit. Defendant nos. 6 and 7 have filed written statement and thereafter, defendant no. 5 moved an application below exhibit 97 for amendment in the written statement, but it was rejected initially. Thereafter, defendant no.5 filed review application below exhibit 104 under Order 47 Rule 1 r/w. Section 97 of the Code of Civil Procedure, 1908. The said application was partly allowed and partly rejected by the trial Court. The learned Judge of the trial Court allowed defendant no. 5 to carry out amendment only to the extent of the pleadings relating to defendant nos. 6 and 7. Hence, this Writ Petition.

3. The learned Counsel for the petitioner has submitted that the reasoning given by the trial Court is erroneous. In fact, the learned Judge of the trial Court has accepted that the amendment is proper and necessary for adjudication. He has further submitted that the trial Court rejected those amendments only on the point that it is going to change the entire defence of defendant no.5. Thus, the reasoning given by the learned Judge of the trial Court is

illegal and is required to be set aside. After impleadment of defendant nos. 6 and 7, it was his right to meet the case of defendant nos. 6 and 7 and, therefore, he moved the application for amendment of his written statement and it should have been allowed to its entirety

4. The learned Counsel for respondent no.1 while opposing this Writ Petition, has supported the order passed by the trial Court. He has relied on the chronology of the events and pointed out that it was too late for defendant no.5 to place such application, which vitiated the case of the plaintiff.

5. Heard submissions. Perused the impugned order. It is the suit for partition. Defendant no.5 is a purchaser of the suit property and remaining are the siblings. The suit was filed on 2nd November, 2006. Defendant no.5 filed written statement on 3rd March, 2007. Thereafter, the issues were settled. Parties have tendered evidence and arguments were heard. The trial Court fixed the matter for pronouncement of the judgment on 17th March, 2009. On a very day, instead of pronouncement of the judgment, the learned Judge of the trial Court passed the order of

impleadment of defendant nos. 6 and 7 in the array of the defendants and gave them opportunity to file their written statement. Defendant nos. 6 and 7 have filed written statement on 10th August, 2009. Hence, the issues were settled and thereafter, defendant no. 5 moved the application for amendment of the written statement on 18th September, 2009. The said application was rejected on 30th October, 2009 and thereafter, he filed Review Application on 24th November, 2009, which was rejected on 29th September, 2011. The chronology of the events discloses that the entire suit and evidence was tried before the trial Court. Both the parties appeared before the Trial Court. The parties have tendered their evidence based on the stand taken by the opposite party and, therefore, the trial Court has rightly allowed the amendment to the extent of the pleadings relating to defendant nos. 6 and 7, who are necessary and proper parties for adjudication and has rightly rejected remaining amendments in the written statement. The finding given by the learned Judge of the trial Court that all these facts were within the knowledge of defendant no.5 and the amendment will eventually change the defence and will go to the root of the matter and will change the entire complexion of the suit is correct. Hence, Writ Petition is

dismissed. The trial Court to proceed with the matter, as the evidence is recorded in the year 2009 itself. The trial Court shall try to endeavour to decide the suit on or before 30th November, 2018. Parties to co-operate the trial Court.

(MRIDULA BHATKAR, J.)