

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

WRIT PETITION NO. 10628 OF 2019

HAJI SHAIKH ISMAIL SHAIKH MOHAMMAD
VERSUS
KANTABAI ASHOKKUMAR DHOOT AND OTHERS

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Advocate for the Petitioner : Shri P. S. Agrawal

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 06th NOVEMBER, 2019.

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PER COURT :

1. The petitioner is the original added defendant No. 4 in Special Civil Suit No. 35/2011 and is aggrieved by the order dated 17/07/2015. This petition is filed on 18/07/2019. Grievance is that the plaintiff has been permitted to amend the plaint by the impugned order by which his application Exhibit 71 was allowed.

2. The learned Advocate for the petitioner has strenuously criticized the impugned order. He draws my attention to the nine grounds formulated in the memo of the petition. He submits that the nature of the cause of action would be altered if the amendment

is allowed.

3. I have considered the submissions of the learned Advocate and have gone through the petition paper book with his assistance.

4. The suit has been filed for seeking partition and separate possession of the ancestral properties. The plaintiff came to know during the pendency of the suit that defendant No. 1 has purchased various properties through the earnings/income out of the suit property. Hence, such newly purchased properties were sought to be added in the common hotch-potch.

5. I do not find that the impugned order permitting such amendment would amount to changing the nature of the cause of action. In a suit for partition and separate possession, all the ancestral properties and such properties purchased from the earnings of the ancestral properties, have to be arrayed for a proper adjudication. The petitioner would be at liberty to file an additional written statement, if not already

filed, so as to oppose the amended portion of the plaint.

6. In view of the above, the petition, being devoid of merit is, therefore, dismissed.

7. The learned Advocate for the petitioner submits that the suit is pending for more than 8 years. Keeping in view that all the litigants are equally placed in a suit for partition and separate possession, he prays that the suit may be expedited.

8. I find that the request of the petitioner can be entertained. The Trial Court shall, therefore, decide Special Civil Suit No. 35/2011 as expeditiously as possible and preferably on or before 31/10/2020.

(RAVINDRA V. GHUGE, J.)

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