

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

5 - WRIT PETITION NO. 1441 OF 2003

1. Sou. Dropadabai W/o Yeshwanta Jadhav
2. Vithal S/o Yeshwanta Jadhav
3. Pandurang S/o Yashwanta Jadhav
4. Sou. Usha W/o Baban Ghodake
5. Sou. Shakuntala w/o Bharat Hawale

... Petitioners
(Orig. Defendants)

VERSUS

1. Bhamabai W/o Yeshwanta Jadhav
2. Sou. Sindubai W/o Sandipan Dhas
3. Sou. Indubai W/o Bhaskar Abdar

... Respondents
(Orig. Plaintiffs)

...

Mr. R.M. Mohale h/f Mr. S.S. Choudhari, Advocate for the
Petitioners
Mr. M.K. Deshpande, Advocate for Respondent Nos. 1 to 3
...

CORAM : V. K. JADHAV, J.
DATED : 27th January, 2020

PER COURT:-

1. The petitioners are the original defendant nos. 1 to 5. The respondent no.1 – plaintiff no.1 viz. Bhamabai alone has filed an application (Exhibit – 87) in Regular Civil Suit No.8 of 1995 under Order VI Rule 17 of the Civil Procedure Code for amendment in the plaint. The petitioners herein have strongly resisted the said application by filing written say. Respondent no.1 – plaintiff no.1 has filed the said application (Exhibit-87)

for adding prayer for partition along with the prayer already made for recovery of possession. By impugned order dated 11.04.1997 below Exhibit-87 in Regular Civil Suit No.8 of 1995, the 2nd Jt. Civil Judge, Senior Division, Beed, allowed the said application. Hence this writ petition.

2. Learned counsel for the petitioners submits that petitioner no.1 - Dropadabai is a legally wedded wife. However, respondent no.1 - Bhamabai also claims to be the legally wedded wife of deceased Yeshwanta Jadhav. Though respondent no.1 - plaintiff no.1 has conceded the shares of petitioner nos. 2 to 5 treating them as illegitimate children of deceased Yeshwanta Jadhav, entitled for share in the partition, however, it is a disputed fact and as such, the trial court should not have granted the amendment as proposed in the application (Exhibit-87). Learned counsel submits that furthermore, the said application (Exhibit - 87) for amendment came to be filed at belated stage when the evidence of both the parties was over. Even then, the trial court has considered the same and allowed it. Learned counsel for the petitioners submits that the other respondents - plaintiffs have not joined respondent no.1 - plaintiff no.1 in filing the said application (Exhibit-87) and as such, the amendment sought for is not legally permissible. Learned counsel for the petitioners submits

that even the house property is not an ancestral property and there is a dispute on that. The amendment sought for has changed the nature of the suit in its entirety.

3. Learned counsel for the respondents submits that the respondents have instituted the suit for possession. However, the proposed amendment is sought for the reason that in case, if respondent no.1 – plaintiff no.1 held to be the legally wedded wife, then defendants nos. 2 to 5 would be ultimately held to be the illegitimate children of deceased Yeshwanta Jadhav and as such, they are also entitled for the share in the ancestral property. Learned counsel for the respondents submits that the proposed amendment would not cause any prejudice to the defence of the petitioners - original defendants. Learned counsel submits that the proposed amendment would be in the nature of alternate relief and it would hardly cause any prejudice to the other side. Learned counsel submits that the suit is pending since 1995. The respondents – plaintiffs are now represented by the same counsel and the other respondents have no objection for the proposed amendment. Learned counsel submits that at the time of allowing the application seeking amendment in the plaint, merits of the proposed amendment are not required to be considered. Even if the disputed facts are

there, the parties can substantiate their pleadings by adducing oral and documentary evidence in support of their claim. The trial Court has rightly passed the order. No interference is required. The writ petition is liable to be dismissed.

4. On going through the contents of the plaint, the application (Exhibit-87) and the impugned order, it appears that by insertion of prayer about partition, which would be the alternate prayer, no prejudice is likely to be caused to the petitioners - defendants. It is also well settled that while considering the amendment, merits of the proposed amendment are not required to be considered. Apart from this, if the respondent no.1 - plaintiff no.1 succeeds to prove her status as a legally wedded wife of deceased Yeshwanta Jadhav, in that event, the petitioner - defendant nos. 2 to 5 would be held to be the illegitimate children of deceased - Yeshwanta Jadhav and they would be entitled for share in the joint property. If it is held that the house property is a self acquired property of the the petitioners - defendants, the said property will be excluded from consideration. In view of the same, even if the amendment sought belatedly, I find no fault in the order of the trial Court to allow it by recording the observations that the proposed amendment would not cause any prejudice to the defence of the petitioners - defendants.

Furthermore, respondent no.1 – plaintiff no.1 has filed the application (Exhibit-87) seeking amendment. Learned counsel appearing for all the respondents has made a statement that the said amendment has been proposed for all the respondents – original plaintiffs. In view of the same, I do not find any fault in the order passed by the trial Court. Hence, I proceed to pass the following order:

ORDER

- (I) The writ petition is hereby dismissed.
- (II) The trial Court shall dispose of the pending suit, as expeditiously as possible, preferably within a period of (1) year from the date of this order.
- (III) The writ petition is accordingly disposed off.
- (IV) Rule discharged.
- (V) In view of dismissal of the writ petition, pending Civil Applications stand disposed off.

(V. K. JADHAV, J.)

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