

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

8 WRIT PETITION NO. 1652 OF 2003

KESHARBAI SHANKAR MANE AND OTHERS  
VERSUS  
PANDHARINATH SHANKAR MANE AND OTHERS

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Advocate for Petitioner : Mr. M. N. Navandar  
Advocate for Respondent No.1 : Mr. K. D. Bade Patil  
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**CORAM : V. K. JADHAV, J.**  
**DATED : 20<sup>th</sup> JANUARY, 2020**

**ORDER :-**

1. Heard both sides.
2. The petitioners are the original defendant nos. 2 to 6. Respondent no.1/original plaintiff instituted Regular Civil Suit No. 97 of 1994 for a decree of partition and separate possession to the extent of his 1/4<sup>th</sup> share in respect of the suit property. The petitioners/defendants have filed their written statement and specifically denied the status of some of the properties and according to them, the said property is a self acquired property of the petitioners/defendants. During pendency of the suit, respondent no.1/plaintiff filed an application Exhibit 65 under Order VI Rule 17 of C.P.C. for amendment in the plaint. The petitioners/defendants have strongly resisted the application by filing their say. The trial court by the impugned order dated

16.07.1998 below Exhibit 65 in Regular Civil Suit No. 97 of 1994, allowed the application. Hence this Writ Petition.

3. Learned counsel for the petitioners/original defendants submits that only after filing of the written statement, wherein the petitioners/defendants have raised the defence about the self-acquisition of the property out of the properties as mentioned in para no.1 of the plaint of the suit, after a gap of two years, respondent no.1/plaintiff has filed application Exhibit 65 mentioning all details to substantiate that the said property is not self-acquired property as contended, and in fact, the said property was purchased out of the joint nucleus. Learned counsel submits that respondent no.2/original defendant no.1 has given a written statement in favour of the petitioners herein. However, the trial court has not considered the same and allowed the application Exhibit 65.

4. Learned counsel for respondent no.1/original plaintiff submits that the amendment as sought by way of application Exhibit 65 is formal in nature and though the property as mentioned in column (1) of the plaint is stated to be the property owned and possessed by the joint family, it has not been

specifically pleaded that out of the said properties, some properties came to be purchased out of the joint nucleus. Learned counsel submits that the proposed amendment does not change the nature of the suit. It is for respondent no.1/plaintiff to substantiate his pleadings. Learned counsel submits that at the time of allowing the application seeking amendment in the pleadings, merit of the proposed amendment should not be considered. The trial court has rightly allowed the application Exhibit 65. There is no substance in the Writ Petition. The Writ Petition is liable to be dismissed.

5. On careful perusal of the contents of the application Exhibit 65, it appears that the proposed amendments in para 1, 2, 3 and 4 are formal in nature. Even if the proposed amendments in para 5, 6 and 7 are concerned, it has been contended that some of the properties came to be purchased out of the joint nucleus of the family. The petitioners/defendants have specifically pleaded in their written statement that within their salaried income, some of the suit properties came to be purchased and it is the self-acquired property. The parties are required to substantiate their pleadings by adducing cogent and reliable evidence. However, at the time of considering the application seeking amendment, merit of the proposed amendment is not required to be considered. It is for the

trial court to consider the written statement filed by original defendant no.1, who happened to be the father, in favour of the petitioners/defendants during the course of the full-fledged trial of the suit. I do not find any fault in the order passed by the trial court. It further appears that this Court, while granting rule on 02.07.2003, granted interim relief in terms of prayer clause (G) and as such, the further proceedings in Regular Civil Suit No. 97 of 1994 are stayed. Thus, I proceed to pass the following order:

#### ORDER

- I. The Writ Petition is hereby dismissed.
- II. The petitioners/defendants are at liberty to file additional written statement and also to produce the documents, if admissible in evidence, to substantiate the contention raised by way of such additional written statement.
- III. The trial court shall decide the pending suit bearing Regular Civil Suit No. 97 of 1994 as expeditiously as possible, preferably within a period of one year from the date of this order.
- IV. Writ Petition is accordingly disposed off. Rule discharged.

( V. K. JADHAV, J.)

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