

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

40 WRIT PETITION NO.7581 OF 2014

RAOSAHEB BABURAO SHINDE
VERSUS
TUKARAM BABURAO SHINDE AND OTHERS

...
Advocate for Petitioner : Mr. Shirsath P.B.
Advocate for Respondent Nos.1 & 2 : Mr. V.S. Bedre
...

**CORAM : ROHIT B. DEO, J.
DATED : 04th FEBRUARY, 2020.**

PER COURT:-

. The petitioner who brought Suit 139 of 1996 for partition and separate possession, is aggrieved by the rejection by the Trial Court of the application preferred under Order 6 Rule 17 of the Civil Procedure Code for permission to amend the plaint.

2. The plaintiff sought to incorporate and include house bearing No.67/2 situated at Village Pimpalgaon, Pisa in the suit property qua which the petition is sought.

3. The plaintiff contended that it was only in the written statement filed on behalf of the defendant that there was a disclosure as regards the existence of the said house. The plaintiff contended that since the details were not available, certain time was consumed in obtaining details and ultimately he preferred the application for amendment.

4. The Trial Court has held that the written statement was filed on 16.07.2011 and the application seeking amendment which was filed on 08.08.2014 was highly belated. The Trial Court noted that in the interregnum, the evidence proceeded. The Trial Court further noted that the plaintiff is seeking not only to add certain property, the plaintiff is also seeking impleadment of additional defendants in whose name the property is situated.

5. The learned counsel for the petitioner points out the decision of the learned Single Judge in Mohan s/o Maluram Agrawal Vs. Kaladevi wd/o Sawarmal Agrawal, 2007(2) Mh.L.J.74, to contend that the amended provisions of Order 6 Rule 17 are not applicable since the plaint is filed before the relevant date. The learned counsel for the respondents relied on the decision of the Hon'ble Apex Court in Pandit Malhari Mahale Vs. Monika Pandit Mahale and Others in Civil Appeal No.189 of 2020. However, the said decision considers the provisions of amended Order 6 Rule 17.

6. Even if the amended provisions of Civil Procedure Code are not applicable to the plaint which is filed in the year 1996, the plaintiff appears to have delayed the filing of the amendment application and the explanation is not

entirely satisfactory. However, considering that the suit is for partition, it would be in the interest of all the members of the family to have a complete and effective adjudication of the interse dispute. It is only in this view of the matter, I am inclined to grant the opportunity to the plaintiff to amend the plaint.

7. The order impugned is set aside. The application Exhibit-159 for permission to amend the plaint is allowed.

8. The Trial Court is requested to expedite the suit.

9. Every contention including the contention that by amending the suit plaint a time barred relief is being introduced, is kept expressly open.

10. Writ petition is disposed of.

(ROHIT B. DEO, J.)