

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

CIVIL WRIT PETITION NO.9847 OF 2019

Janaki Dyanoba Gaikwad & Ors

..Petitioners

Vs

Sou. Geeta Sanjeev Khilare & Ors

..Respondents

Mr.Prasad Kulkarni for the Petitioners.

Mr.Anil S. Kalekar for the Respondents.

CORAM : C.V. BHADANG, J.

**DATE : 14th OCTOBER 2020
(Through Video Conference)**

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PC.

1. By this petition under Article 227 of the Constitution of India the petitioners are challenging part of the order dated 14th January 2019 (Below Exh.226) passed by the learned Civil Judge Junior Division, Mohol, District-Solapur in Regular Civil Suit No.9 of 2000.

2. The petitioners are original defendant Nos.3,4 and 5 in RCS No.9 of 2000 which is filed by the respondent Nos.1 and 2 (Original Plaintiffs). That is a suit filed for partition and separate possession of the suit properties, which are more specifically

described in paragraph 1 of the plaint. Indisputably, the trial has commenced in the said suit in which the plaintiffs have closed their evidence. It is at this stage that the petitioners filed application (Exhibit 226) under Order VI Rule 17 of the Civil Procedure Code for amendment of their written statement. The amendment sought is set out in paragraph 2 to 4 of the said application. It may be mentioned that the amendment is sought in paragraph 6 and 9 of the written statement, which was filed in the year 2015. Insofar as the amendment in paragraph 9 of the written statement is concerned, the same has been allowed, as the Trial Court has found that the original pleadings about the plaintiff No.1 being married with the son of her matrimonial aunt were made out of inadvertence. Thus, the application Exhibit-226 has been partly allowed to the extent of the proposed amendment in paragraph 9 of the written statement. The learned Trial Court has refused to permit the amendment in paragraph No.6 of the written statement. Feeling aggrieved the petitioners have approached this Court.

3. I have heard the learned counsel for the petitioners and the learned counsel for the respondent Nos.1 and 2. Perused record.

4. The learned counsel for the petitioners submitted that the amendment can be allowed at any stage of the proceedings. It is submitted that the proposed amendment is necessary for deciding the real controversy in the matter and thus ought to be allowed. The learned counsel pointed out that the suit having been filed in the year 2000 i.e. prior to the coming into force of the amendment acts of 1999 and 2002, the proviso to Order VI Rule 17 of the C.P.C. will not be applicable. Thus, it is submitted that, notwithstanding, that the trial has commenced, the amendment could have been allowed. It is submitted that the proposed amendment does not seek to withdraw any admission as such nor causes any prejudice to the original plaintiffs. The learned counsel has placed reliance on the decision of the Supreme Court in the case of ***State of Madhya Pradesh V/s. Union of India & Anr.***¹.

5. The learned counsel for the respondent Nos.1 and 2 has supported the impugned order. It is submitted that the written statement having been filed in the year 2015, the proviso to Order VI Rule 17 of C.P.C. would be applicable. Thus, the trial having commenced, the amendment could not be allowed in the absence of the petitioners showing due diligence. It is submitted that even

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otherwise the proposed amendment seeks to withdraw an admission and would fundamentally change the nature of the defense, causing serious prejudice to the plaintiffs and thus the amendment has rightly been refused.

6. I have considered the submissions made. The subject matter of the suit comprises of in all seven lands of Village Takli (Sikkandar), Taluka-Mohol, District-Solapur out of which we are presently concerned with the lands Gat No.242/2/3, 175/2 and Gat No.59. The plaintiffs claim that all these lands are ancestral lands in which they have a share. The petitioners in paragraph 6 of the written statement filed in the year 2015 had claimed that the land Gat No.242/2/3 and 175/2 were purchased by utilizing income from Gat No.59. By the proposed amendment the petitioners want to introduce a pleading claiming that Gat No.242/2/3 and 175/2 were purchased by utilizing *stridhan* of the defendant No.2. The only reason given in support of the amendment at such belated stage is that the original pleadings were made out of inadvertence. The contention in my considered view cannot be accepted.

7. There was a serious dispute as to whether the proviso to Order VI Rule 17 of the C.P.C. would apply. The learned counsel for

the petitioner submitted that pleadings as defined in Rule 1 of Order VI of the CPC would mean both plaint and written statement. He submitted that the plaint having been filed in the year 2000 the said proviso will not be applicable. On the contrary the learned counsel for respondent Nos.1 and 2 has submitted that amendment is sought to the written statement, which is filed in the year 2015 and therefore the said proviso would be applicable. For this purpose the learned counsel has placed reliance on Section 16(2)(b) of the Code of Civil Procedure (Amendment) Act, 2002. It is submitted that even otherwise such an amendment at belated stage, after the plaintiff have closed their evidence, cannot be allowed.

8. Although the pleadings, include both the plaint and the written statement, in the present case, the amendment is sought to the written statement which is filed in the year 2015 and thus prima facie it appears that the proviso to Order VI Rule 17 of the Code would be attracted. However, I do not propose to express any final / binding opinion, in this regard, inasmuch as, even otherwise on facts I find that the amendment has rightly been refused. It is necessary to note that even before the introduction of the proviso to Order VI Rule 17, delay was one of the factors which the Court could take into consideration while deciding the question of allowing an

amendment. It is necessary to emphasise that while considering such a prayer the Court has to consider several circumstances in which the delay may be one of the circumstance particularly when it would seriously prejudice the other party. In the present case the plaintiffs have closed their evidence and now the amendment is sought claiming that the aforesaid two properties were purchased out of the stridhan of the defendant No.2 when the earlier pleading said that they were purchased out of the income from Gat No.59. Such an issue is directly relevant in a suit for partition, which necessarily involves the question of the nature of the property, namely whether it is ancestral or a self acquired property. The only explanation offered is that this was out of inadvertence. It cannot be accepted after a period of 20 years particularly when the plaintiffs have led their evidence and have been cross examined on behalf of the present petitioners. Thus, I do not find that the impugned order suffers from any infirmity, so as to require interference in the supervisory jurisdiction of this Court.

9. The reliance placed on the decision of the Supreme Court in the case of *State of Madhya Pradesh (Supra)* is misplaced. That was a suit filed by the *State of Madhya Pradesh* on the original side of the Supreme Court against the Union of India in which the

plaintiffs sought amendment of the plaint. Although it has been noticed that there is no embargo under Order VI Rule 17 of the C.P.C. for filing the application at any stage, the Supreme Court has observed that the amendment cannot be claimed as a matter of right and where the application does not state any reason for the delay the application cannot be allowed (See paragraph 8 and 14).

It is clear that it was on the facts of the case that the amendment was allowed by which, the plaintiff State of Madhya Pradesh wanted to introduce a stand that the Central Government had issued the impugned notification/order, without proper guidelines and without affording an opportunity to the parties concerned. In my considered view, the said case turned on its own facts.

10. In the result, no case for interference is made out. The petition is accordingly dismissed with no order as to costs.

It is made clear that this Court has not expressed any opinion on the main controversy in the suit.

C.V. BHADANG, J.