

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11632 OF 2019**

Pushpa Shantaram Nimbalkar & Ors.	...Petitioners
Versus	
Dinesh Shantaram Nimbalkar & Ors.	...Respondents

Mr. Prathamesh B. Bhargude for the Petitioners

Mr. Niranjan A. Mogre for the Respondent Nos. 1 and 2

CORAM : REVATI MOHITE DERE, J.
MONDAY, 10th FEBRUARY 2020

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioners have impugned the order dated 31st July 2018 passed by the Joint Civil Judge, Senior Division, Pune, below Exhibit 83 in Special Civil Suit No. 232 of 2015, by which, the learned Judge permitted the respondents/plaintiffs to amend the plaint under Order VI Rule 17 of Civil Procedure Code.

3 Learned counsel for the petitioners/original defendant Nos. 1 to 3 submits that he has no objection to the subsequent events being brought on record i.e. in para (5A) and part of para (5B), however, he has serious objection to the last sentence being amended, which reads as under :

“(5B) The plaintiffs further say and submit that as per the partition dated 16-09-1985, the suit land more particularly described in paragraph No. 1(a) of the plaint was put to the share and ownership of the plaintiffs.”

4 Learned counsel for the petitioners/original defendant Nos. 1 to 3 submits that the trial Court has not considered that the said sentence would change the nature of the suit and has allowed the amendment, permitting the petitioners to bring the subsequent events on record. He, therefore, prays that the impugned order be quashed and set-aside and the matter be remitted back to the trial Court for fresh consideration, with a direction to the trial Court to decide whether the aforesaid sentence would change the nature of the suit.

5 Learned counsel for the respondent Nos. 1 and 2 opposes the petition. He submits that no interference is warranted in the impugned order, in particular, in view of first line of para 6 of the plaint.

6 Perused the papers as well as the impugned order and the amendment application filed by the respondents/plaintiffs. As noted above, the learned counsel for the petitioners has no objection to the averments in para (5A) and part of para (5B), inasmuch as, they bring on record the

events i.e. the filing of the SLP and order passed on the SLP, since it is ultimately an interpretation of the order by the respondents/plaintiffs. The learned counsel for the petitioners, however, has serious objection with respect to the last sentence in para (5B), which is reproduced hereinabove.

7 A perusal of the impugned order shows that the trial Court has not considered whether the said sentence, in any way, changes the nature of the suit, as alleged by the learned counsel for the petitioners. Considering the aforesaid, it would be appropriate to quash and set-aside the impugned order dated 31st July 2017 and remit the matter back to the trial Court for fresh consideration.

8 Accordingly, the impugned order dated 31st July 2018 passed by the Joint Civil Judge, Senior Division, Pune below Exhibit 83 in Special Civil Suit No. 232 of 2015, is quashed and set-aside. Respondents' application (Exhibit 83) is restored back to its original file. The learned Judge to decide the said application after hearing all the parties, on its own merits, uninfluenced by the earlier order.

9 It is made clear that this petition has not been heard on merits and as such, all contentions of all the parties are kept open.

10 The trial Court to decide the said application as expeditiously as possible and in any event, within eight weeks from the date of receipt of this order.

11 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.