

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

946 WRIT PETITION NO.4060 OF 2021

**GOROBA BALI YADAV
VERSUS
RUKMINBAI KUNDLA KATE DELETED AS DECEASED AND OTHERS**

...
Advocate for the Petitioner : Shri V. V. Bhavthankar
Advocate for Respondent No.9 : Shri B. N. Patil
...

CORAM : N. J. JAMADAR, J.

DATE : 04th MARCH, 2021

...

ORAL ORDER :

Heard the learned Advocate for the petitioner and the learned Advocate for respondent No.9.

2. The challenge in this Writ Petition is to the order dated 17/12/2020 passed by the learned District Judge-4, Latur on an application for amendment (Exhibit 36) in Regular Civil Appeal No. 02/2011, whereby the learned District Judge was persuaded to reject the application of the petitioner/plaintiff for amendment in the plaint.

3. The petition arises in the backdrop of the following facts :

The petitioner instituted the suit for declaration of title and the consequential relief of perpetual injunction in respect of the property described in para 1 of the plaint. The plaintiff had averred that

defendant Nos. 1 and 2, namely, Rukminbai and Laxmibai were the step-sisters of his mother Radhika. Late Baburao was the father of his mother Radhika and defendant Nos. 1 and 2. The suit came to be dismissed by judgment and order dated 09th December, 2010. The Trial Court found against the plaintiff on the count of ownership as well as possession.

4. Being aggrieved, the petitioner preferred appeal being Regular Civil Appeal No. 2/2011. When the appeal came to be posted for final hearing, the petitioner preferred application for amendment (Exhibit 36) and sought to assert that defendant Nos. 1 and 2 were not the step-sisters of his mother, but they were born to one Thakubai by late Baburao. Thakubai was not the legally wedded wife of late Baburao. The plaintiff sought to furnish a real pedigree of the parties to the suit.

5. The learned District Judge was persuaded to reject the application for amendment on the count that the facts which were sought to be pleaded by way of amendment had occurred prior to more than 60 years. The amendment was sought to be made when the appeal was listed for final hearing. The proposed amendment was not necessary for determination of real question in controversy between the parties.

6. Evidently, the interdict contained in the proviso to Rule 17 of Order VI comes into play. It was the case of the plaintiff that defendant Nos. 1 and 2 were the step-sisters of his mother. The source of knowledge about the fact that defendant Nos. 1 and 2 were allegedly born to Thakubai by the late Baburao was sought to be established by filing an affidavit of one Mr. Pralhad Pawar. The learned District Judge was of the view that, having regard to the probable time at which the events in question might have happened, no credence could be given to the claim of Mr. Pralhad Pawar, who was 65 years old, and the events had occurred prior to 100 years.

7. In any event, the facts which the plaintiff sought to plead by way of amendment are not such that the plaintiff could assert that despite due diligence he could not have ascertained those facts before hearing commenced in the suit. Moreover, in the context of the nature of the suit, the finding recorded by the learned District Judge that the proposed amendment was also not necessary for determination of real question in controversy between the parties appears justifiable. Thus, there is no merit in this petition.

8. The petition stands dismissed.

(N. J. JAMADAR, J.)

shp/-