

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

WRIT PETITION NO.3025 OF 2016

**ASHOK GANPATI MALI AND OTHERS
VERSUS
NAGABAI SHIVAJI MALI**

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Advocate for Petitioners : Mr. Santosh N. Patne

Advocate for Respondent : Mr. P. V. Barde

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 13th DECEMBER, 2021

PER COURT :

1. This petition challenges the order dated 20-01-2016 passed by the Joint Civil Judge, Junior Division, Omerga, below application Exhibit-55 in Regular Civil Suit No.211/2012, thereby allowing the application filed by the respondent – original plaintiff under Order 6 Rule 17 of the Code of Civil Procedure.

2. The respondent – original plaintiff filed the said suit seeking partition and separate possession of the ancestral property (i.e. suit property) described in the plaint. In paragraph No.4 of the plaint respondent – original plaintiff has averred that petitioner No.1 – original defendant No.1 is addicted to vices like drinks and gambling. It is learnt by the plaintiff prior to two months that defendant No.1 has sold some of the suit properties, without there being any necessity. The suit

proceeded and the cross examination of the plaintiff was over. Thereafter, application Exhibit-55 came to be filed seeking amendment that the sale deeds executed by petitioner No.1 – original defendant No.1, in favour of defendant Nos. 2 to 5 in the year 2004 bearing registration Nos. 3795, 3796 and 1542, are null and void and are not binding on the respondent – original plaintiff. Defendants opposed the said application. However, the trial Court allowed the same.

3. I have heard the rival submissions of both the parties. It is not in dispute that the application under Order 6 Rule 17 was filed by the respondent – original plaintiff belatedly, after commencement of the trial i.e. after the evidence of plaintiff was over. However, taking into consideration the nature of amendment proposed by the plaintiff, the trial Court has held that the amendment is necessary for deciding the controversy between the parties and there would not be any prejudice to the defendants – petitioners herein if the amendment is allowed.

4. The record shows that there is a lack of due diligence on the part of the respondent – original plaintiff in moving the amendment application Exhibit-55. Though, it is a fact that the trial Court was justified in allowing the amendment application Exhibit-55, as the amendment was necessary to avoid multiplicity of suits and since the

property, part of which is sold by way of the sale deeds, is already included in the suit property in the plaint, the nature of relief claimed in the suit does not change if the amendment is allowed. In that view of that matter, the trial Court was justified in allowing the amendment.

5. The decision of this Court in **Kamal Kumar Shivkishan Agrawal Vs. Navnirman Developers and Another**, reported in 2020 DGLS (Bom.) 727, supports the case of the respondent – original plaintiff.

6. For the aforesaid reasons, I find no merit in the present writ petition. However, taking into consideration the lack of due diligence on the part of respondent – original plaintiff, the respondent – original plaintiff is liable to pay cost of Rs.5,000/- to the petitioners – original defendants. The cost to be paid in the Trial Court.

7. With these observations, the writ petition is dismissed.

(NITIN B. SURYAWANSHI, J.)