

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

922 WRIT PETITION NO.8974 OF 2021

THE UNION OF INDIA THR SECRETARY OF GOVERNMENT OF INDIA AND
OTHERS
VERSUS
VIDYA BHALCHANDRA KULKARNI ALIAS VIDYA UMESH WADEKAR

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Advocate for Petitioners : Mr. Deshpande Sanjeev B.

CORAM : MANGESH S. PATIL, J.
DATE : 25.08.2021.

PER COURT :

Heard the learned advocate Mr. Deshpande.

2. The original defendants are before this Court impugning the order passed by the learned Civil Judge on the respondent's application (Exh. 57) in her suit for declaration of title and possession over the suit property, allowing her to carry out certain amendments in the plaint.

3. The learned advocate Mr. Deshpande for the petitioners would submit that the facts which are sought to be brought on record by the proposed amendments were in the knowledge of the respondent since inception. Even some portion of the proposed amendment is not compatible with the earlier pleadings and no such inconsistent pleadings can be allowed to be inserted by way of amendment. He would place reliance on the decision in the case of **M. Revanna Vs. Anjanamma; A.I.R. 2019 Supreme Court 940** and particularly the observations in paragraph No. 5 :

“Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order VI Rule

17 of the Code of Civil Procedure virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money”.

4. I have carefully perused the impugned order as also the papers and considered the submission of the learned advocate Mr. Deshpande. The respondent has filed a suit for declaration regarding her ownership of the suit property and asserting her possession, has also prayed for perpetual injunction restraining the petitioners from disturbing it. By the proposed amendment she has now attempted to bring on record the source by which she derives the title and possession.

5. True it is that in paragraph No. 5 of the plaint she has not disclosed all these particulars which now she intends to incorporate by adding paragraph No. 5A. The fact remains that she has been asserting to be the owner of the suit property and the proposed amendment in paragraph No. 5A only seek to give the particulars as to the source of such derivative title. It cannot be said to be inconsistent with the original pleading.

6. As regards the other objection of the learned advocate in respect of the original pleadings in paragraph No. 17 and the one sought to be added by way of paragraph No. 17A, the learned advocate has been emphasizing on the fact that in original plaint she specifically mentioned that she has been residing in the suit property. However, by way of the proposed amendment now she is changing the line of her pleadings by seeking to add that it is not she but her watchman who has been now residing in the suit property. According to the learned advocate these two pleadings are inconsistent.

7. *Ex facie*, it appears that the original pleadings that the respondent was residing in the suit property are now being sought to be in a way altered to mean that in fact her watchman has been residing in the suit property. But, again, to my mind these cannot be inconsistent pleadings in as much as she has been asserting her possession over the suit property and seeking declaration and perpetual injunction. In what form she has been using the suit property is a matter which is not decisive of the factum of possession particularly when the petitioners are also asserting their own title and possession.

8. These are the two basic objections being raised by the learned advocate to point out that the proposed amendments are inconsistent with the original pleadings.

9. True it is, as has been laid down in the case of **M. Revanna (supra)** a party cannot be allowed to amend the pleadings so as to adopt some inconsistent stand. However, as has been mentioned herein above the pleadings which are said to be inconsistent are not inconsistent at all. Therefore, in my view the petitioners are not entitled to derive any benefit from the decision.

10. The rest of the pleadings sought to be added are in no way inconsistent with the original pleading.

11. It is to be borne in mind that the proposed amendment has been sought even before actual hearing of the suit starts. Therefore, no prejudice is likely to be caused to the petitioners. The proposed amendment is necessary for the just decision of the suit and the impugned order taking a plausible view cannot be interfered with by invoking writ jurisdiction.

12. The Writ Petition is dismissed in *limine*.

(MANGESH S. PATIL, J.)

mkd/-