

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6706 OF 2021**

Prakash Bapuso Herwade .. Petitioner
Versus
Shantinath Bapuso Herwade and Ors. .. Respondents

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Mr.Nagesh Y. Chavan for the Petitioner.

Mr.Makrand M. Kale for the Respondent Nos.1 to 4.

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**CORAM: BHARATI DANGRE, J.
DATED : 16th NOVEMBER, 2021**

P.C:-

1. The petitioner is aggrieved by the order dated 11/12/2020 passed by the 3rd Joint Civil Judge, Senior Division, Sangli, below Exh.79 in Regular Civil Suit No.359 of 2016, thereby allowing an application filed by defendant Nos.1 and 2, seeking amendment in the written statement in terms of Order 6 Rule 17 of the CPC.

2. The petitioner, who is the original plaintiff, has instituted a suit for partition of the properties described in para 1 of the plaint, being two agricultural properties located at Dudgaon, Taluka Miraj, District Sangli. The plaintiff staked a claim that the suit properties were purchased by him alongwith defendant No.1, who is his real brother and, since, the

properties were purchased by putting equal contribution, he is entitled for half of the share in the suit properties and he seeks a partition of the suit properties.

3. Written statement came to be filed by the defendants, opposing the claim and a specific stand has been taken that the ancestral properties have already been partitioned between the members and the plaintiff was allotted some portion of land and even the lands have been mutated by the plaintiff in the name of his sons and there is no dispute between them.

4. In the wake of the rival pleadings staked in the plaint and in the written statement, the learned Judge on 26/02/2019, has framed the two issues and had cast the burden upon the plaintiff and the defendants respectively. The plaintiff is cast with a burden to prove that the suit properties were purchased by him and defendant No.1 by investing amount in half share whereas the defendants were burdened with the issue as to whether they prove that the suit properties are self acquired properties of defendant No.1. Apart from this, issues of limitation and the entitlement of the plaintiff to claim the relief are also framed.

5. At the stage where the plaintiff was being cross-examined, the defendants moved an application for amendment of their written statement by invoking Order 6 Rule 17 of the CPC and by deleting paragraph 6 of the written statement, sought substitution of paras 16A to F wherein apart

from referring to the genealogy, they intended to plead the oral partition dated 14/08/1975 as well as the properties purchased by defendant No.1. It was pleaded that the nature of amendment does not change their defendant and, therefore, it should be allowed.

6. On consideration of the said application, the learned Judge decided the same in the light of the parameters laid down by the Hon'ble Apex Court in case of **Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & Ors.**¹. By applying the said parameters as set out by the authoritative pronouncement as to whether the amendment sought is imperative and necessary for effective adjudication of the case and by refusing the amendment, it would lead to injustice to the parties, the amendment has been allowed.

7. On perusal of the proceeding, including the plaint and the written statement as well as the application for amendment, it can be seen that the parties have been cast with the burden to prove their claim, as set out in their pleadings and since the case of the plaintiff is based upon his assertion that the suit properties were purchased by him alongwith defendant No.1 and he had invested half of the money in purchasing the suit properties, the learned Judge has cast a burden upon him to prove that the properties were purchased by him alongwith defendant No.1 by investing the amount in equal share. As far as the claim of the defendants in the written statement that the suit properties are self acquired properties is concerned,

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the burden to prove the same is cast on the defendants. In the written statement, a reference is made to an oral partition and what is now claimed is that there are certain properties, which are self acquired whereas some properties are ancestral properties, of which an oral partition has already taken place. Construing the said pleadings in its true sense, the learned Judge has noted that the defendants want to add certain facts and events, which had taken place in the family in respect of the suit properties, by making reference to the oral partition between the plaintiff and the defendants. The guiding principle as to whether the proposed amendment would constitutionally or fundamentally change the nature and character of the case is the determinative factor and the learned Judge has rightly invoked the guiding principles emerging from the case of ***Revajeetu Builders*** (*supra*) and has allowed the amendment, subject to the cost of Rs.1,000/-. The amendment was directed to be carried out in the written statement and it is informed that the suit is at the stage of cross-examination.

I find no legal infirmity in the impugned order, since the amendment which has been allowed in the written statement would come to the aid of the Court for determining the issues which have been settled by it; since it is necessary for effective adjudication, same has been allowed.

The impugned order deserved to be upheld by dismissing the present writ petition. The writ petition is dismissed. No order as to costs.

8. Since the petition is pending in this Court since the year 2021 and the suit is instituted in the year 2016, the learned Judge is requested to expedite the suit and make an endeavour, with the assistance of the respective parties, to conclude the proceeding of Regular Civil Suit No.359 of 2016 on or before 30/04/2022.

(SMT. BHARATI DANGRE, J.)