

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2316 OF 2021

Gulab Baburao Jore & Ors.

..Petitioners

v/s.

Shivaji Kaluram Jore & Ors.

..Respondents

Mr. Rakesh S. Patil for the Petitioner/s.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : JUNE 30, 2021.**

P.C.

1. The Petitioner herein has challenged the order dated 16.02.201 whereby the learned Judge has allowed the Application at Exhibit 49 and thereby permitted the Respondent No.1 Plaintiff to amend the plaint.

2. The Respondent No.1 had filed a suit for partition, possession and perpetual injunction. The case of the Plaintiff is that the suit property which is described in Schedule A, was owned by Vithoba Zore, who had five sons and three daughters. The Plaintiff and Defendant No.8 are claiming right through

Abasaheb, Defendant Nos.1 to 7 are the heirs of Baburao and Defendant No.9 is the son of Nivrutti. The Plaintiff claimed that the heirs/successor of the other two sons have no right to the suit property since they have already been allotted separate properties towards their share in the common property.

3. The Petitioner-Defendants denied that the suit properties are joint ancestral properties. They claimed that some of these properties were purchased by Baburao from his own income and are exclusively owned and possessed by them. They also disputed identification of the suit properties. The Petitioners also claimed that the Respondent-Plaintiff had suppressed material facts viz. dismissal of previous suit for partition and other litigation relating to the suit property. The Petitioners also gave the corresponding new survey numbers of the suit property.

4. The Respondent-Plaintiff thereafter filed an application for amendment claiming that part of the suit property was sold during the pendency of the suit and sought leave to implead Shivshrushti Developers, the purchaser as party Defendant No.10 with further consequential amendment. The Respondent-Plaintiff also sought to elaborate as to under what circumstances the properties were

purchased in the name of Baburao. The Respondent-Plaintiff has sought to amend the Schedule “A” as to specify corresponding new survey numbers of the suit property and has also given details of the previous litigation.

5. The amendment does not change the nature of the suit but only elaborates and explains the facts already averred in the plaint and is necessary to determine the real controversy between the parties. The impleadment of Defendant No.10 and other consequential amendment was necessitated in view of the subsequent event viz. transfer of part of the suit property during pendency of the suit. The application does not suffer from gross delay or laches. Under the circumstances, no case is made out to interfere with the impugned order in exercise of writ jurisdiction under Article 227 of the Constitution.

6. The Petition has no merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)