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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.738 OF 2022

Bhagwat Kundlik Pawar and Others

PETITIONERS

VERSUS

Ashok Kundlik Pawar and Others

RESPONDENTS

.....
Mr. Rahul R. Karpe, Advocate for the petitioners
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 10th MARCH, 2022

ORDER :

1. The petitioners are aggrieved by the order dated 30th November, 2021 passed by the learned Civil Judge, Junior Division, Rahuri, below application Exhibit-40 in Regular Civil Suit No. 168 of 2013 thereby allowing the application filed by the plaintiffs / respondents under Order VI, rule 17 of the Civil Procedure Code.

2. The suit is filed for partition and separate possession of the ancestral properties with a relief of declaration and injunction. During the pendency of the suit, when the evidence was in progress, by filing application Exhibit-40 the plaintiffs sought amendment to the plaint. It is contended that the plaintiffs have

claimed relief of injunction not to create third party interest in the suit property, however, after filing of the suit and during the pendency of the suit, some of the suit properties are transferred to third parties. Therefore, said transactions are required to be brought on record.

3. The amendment application was resisted by the petitioners / defendants contending that the proposed defendants are not members of the joint Hindu family and there is no necessity to add them as party defendants. They claimed that the suit properties were earlier partitioned in the year 1980 and the parties are residing separately and the properties, which are allegedly sold during the pendency of the suit, were the self acquired properties of the defendants. The application, therefore, is required to be rejected.

4. The trial court allowed the application, holding that on going through the sale deeds, it appears that the sale deeds are executed in respect of the properties, which are part of the properties mentioned in the suit. The suit is filed on 21st February, 2013 for partition, possession, declaration and injunction in respect of the suit properties and the sale deeds are executed after filing of the suit. Perusal of the sale deeds, *prima facie* shows that interest of third parties are created in the suit

properties and, therefore, for proper adjudication of the matter, the proposed amendment appears to be necessary.

5. Since the amendment sought is in respect of the subsequent events, which occurred during pendency of the suit, the trial court has rightly allowed the application and permitted the amendment. It is settled legal position that the amendment is to be liberally granted with a view to avoid multiplicity of proceedings and so as to bring subsequent events on record. Merits of the amendment cannot be gone into at the time of deciding the amendment application. There is no substance in the contention of the petitioners that the amendment was sought at a belated stage and due diligence on the part of the respondents is lacking, as after the plaintiff came to know about the sale transactions, they have sought the amendment.

6. In the facts of the present case, no illegality or perversity is found in the impugned order. The writ petition being devoid of merits, is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE