

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

WRIT PETITION NO.4230 OF 2022

**SHOBHA SHIVAJIRAO DESHMUKH WARPUDKAR AND OTHERS
VERSUS
BHARAT GOPALRAO DESHMUKH**

...
Advocate for Petitioners : Mr. Suvidh S. Kulkarni

...

CORAM : MANGESH S. PATIL, J.

DATE : 22.07.2022

PER COURT :

Heard.

2. In a suit filed by the respondent seeking declaration regarding illegality of a will as null and void, the petitioners/defendants are aggrieved by the order passed by the trial court whereby respondent's application (Exhibit-39) seeking amendment of the plaint under Order VI Rule 17 and impleadment of the persons named therein under Order I Rule 10 of the Code of Civil Procedure has been allowed.

3. The learned advocate for the petitioners would submit that the proposed amendment is clearly inconsistent with the averments as are existing in paragraph Nos.11 and 12 of the plaint wherein the respondent was asserting his possession in the suit property. By the proposed amendment he is now changing the stance and trying to impugn the transfers made by the petitioners and even seeking mandatory injunction.

The respondent was, all the while, aware about the stand to be taken but had not taken prompt steps in seeking amendment. Even his stand that he became aware about the transfer after the written statement was filed is convenient stand being taken as an after thought. A serious prejudice would be caused to the petitioners if the proposed amendment is allowed to be carried out. The trial court has erred in appreciating the facts and circumstances and the law.

4. The respondent has filed the suit seeking declaration that the will is null and void and by asserting to be in possession of the suit property sought perpetual injunction.

5. By the proposed amendment, he now intends to assert that the petitioners have sold the suit properties to several persons and now intends to implead the purchasers and to challenge the transfers.

6. The learned advocate for the petitioners submits that the issues are still to be framed. If such is the state of affairs, as has been laid down in the matter of **Vidyabai and Ors. Vs. Padmalatha and Anr.; (2009) 2 SCC 409**, the trial is still to begin and there would not be any impediment in seeking an amendment under Order VI Rule 17 of the Code of Civil Procedure.

7. True it is that initially the respondent did assert that he was in possession of the suit properties and the proposed stand alters his position in as much as he now intends to challenge the sale deeds executed in favour of the purchasers who are also sought to be impleaded in the array of the defendants and intends to claim mandatory injunction. But then the suit is

still at a nascent stage. Only the pleadings have been completed. The petitioners are not likely to be put to any prejudice merely by allowing the amendment and impleadment of the purchasers.

8. In fact, the proposed amendment would enable the trial court to decide the suit and the rival rights, completely and once for all. There is no illegality in the order. The Writ Petition is dismissed.

9. Observations made herein above are confined to the decision of the Writ Petition.

(MANGESH S. PATIL, J.)

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