

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

WRIT PETITION NO.2862 OF 2013

PADMABAI TANHAJI GADE

..PETITIONER

VERSUS

SARASWATI TANHAJI GADE AND OTHERS

..RESPONDENTS

...

Mr. Mahesh V. Ghatge, Advocate for the Petitioner.
Mr. Rajendra Chavan h/f Mr. V. A. Bagdiya, Advocate
for Respondent No.3.

...

CORAM : S. V. GANGAPURWALA, J.

DATED : 14th JANUARY, 2022.

PER COURT:-

1. The petitioner filed Suit for partition and separate possession. The parties led their evidence. After the evidence is concluded, the petitioner filed application Exhibit-71 for adding one property as a Suit property which stood in the name of father-in-law of the petitioner and transferred in the name of son of deceased's son from second wife in the year 2012. The said application is rejected.

2. Mr. Ghatge, learned counsel for petitioner submits that, the said property owned by the father-in-law is a joint family property. The entire details were not within the knowledge of the petitioner. The petitioner is also taking exception to the transaction of sale between defendant no.4 and defendant nos.2 and 3.

3. Mr. Bagdiya, learned counsel for respondents supports the judgment of the Trial Court and submits that, the amendment is sought when the matter reached the stage of final argument. The petitioner was having knowledge of the said property when she filed Suit in the year 2009. The plaintiff could have added said property as Suit property in the year 2009 only. It is only after the Suit property is transferred in favour of defendant nos.2 and 3 surreptitiously the application is filed for amendment.

4. I have considered the submissions canvassed by the learned counsel for respective parties.

5. It is trite that, the merits of the amendment application are not to be gone into while considering the application for amendment. It is a fact that, there is delay on the part of the petitioner in filing the application for amendment. The petitioner could have included the said property as a Suit property at the time of filing of the Suit. However, it appears that, the petitioner is aggrieved after the defendant no.4 alienated the said property in favour of defendant nos.2 and 3 in the year 2012 and thereafter, the amendment application is filed. The defendants will have every opportunity to take all the available defences as against the said property.

For the delay caused, the petitioner can be mulct with cost.

6. In light of that, I pass the following order:

ORDER

A. The impugned order is quashed and set aside and the application Exhibit-71 for addition of Suit property bearing Block No.32 admeasuring 98R is allowed on a condition that petitioner pays cost of Rs.3000/- each to defendant nos.2, 3 and 4 within a period of four weeks.

B. The cost be deposited in the Trial Court. If the cost as directed is not deposited, then the application Exhibit-71 stands rejected. If the cost is deposited as directed, then the application Exhibit-71 stands allowed. In that event, defendants are entitled to file additional written statement with regard to the amended averments. The parties are entitled to lead further evidence only to the extent of the amendment made and the property concerned.

7. Writ Petition is disposed of. No costs.

(S. V. GANGAPURWALA)
JUDGE