

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

WRIT PETITION NO.5934 OF 2022

**BHIKAN HIRAMAN CHAUDHARI AND OTHERS
VERSUS
MANISHA KUNDAN PATIL AND OTHERS**

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Advocate for Petitioners : Mr. Vijay Bhalerao Patil
. . .

CORAM : MANGESH S. PATIL, J.

DATED : 14 JUNE 2022

PER COURT :

- . Heard learned advocate for the petitioners.
2. The petitioners are the original defendant nos.5 and 6 defending the suit for general partition. Being aggrieved by the order passed by the trial court whereby the respondent No.1-plaintiff has been permitted to carry out amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure, they have preferred this petition.
3. Learned advocate Mr. Patil for the petitioners would submit that, going by the reliefs being claimed by the respondent no.1 in her original plaint, in spite of having laid a claim to have a share in the amount of compensation which is receivable pursuant to a compulsory acquisition, by the

proposed amendment she is now seeking to add another property purchased by the petitioners averring that it was purchased from and out of the amount of compensation received by him due to acquisition of one of the joint family properties. The issues were framed and a new case was being put up by the proposed amendment. The trial court ought not to have permitted her to amend the plaint at such belated stage.

4. Admittedly, it is the suit for general partition. It is a matter of record that respondent no.1 has been claiming partition of various properties stated to be the joint family properties. It has also been claimed that one of the joint family properties has been acquired and the amount of compensation has been received by the petitioners. She claimed a share therein.

5. By way of proposed amendment, the respondent no.1/plaintiff sought to aver that the petitioners have acquired land from and out of the amount of compensation received by them after one of the suit properties was compulsorily acquired.

6. Apparently, she intends to establish that in view of the source for acquisition of this land it was an accretion to the joint family property. If this is so, one cannot comprehend as to how she can be attributed with any improvement which is inconsistent with her stand.

7. Whether and to what extent the respondent would be entitled to

have reliefs including the one sought to be claimed post such amendment cannot be the decisive factor while considering her request for amendment of the plaint. The petitioners have been labouring under an impression that even at this stage, they are entitled to demonstrate as to how she would not be entitled to have the relief sought to be added. The question of entitlement is to be decided by the trial court at the full-fledged trial.

8. The proposed amendment is not inconsistent with the original stand of the respondent no.1. No right seems to have accrued to the petitioner in the absence of such pleadings. The trial court has exercised the discretion and has allowed the amendment to be carried out. The petitioners would be entitled to take whatever stand they intend to, by filing additional written statement or by seeking amendment of the written statement to the proposed amendment of the plaint.

9. There is no merit in the petition. It is dismissed with costs.

(MANGESH S. PATIL, J.)

Tandale/-