

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

956 WRIT PETITION NO.7143 OF 2022

DILIP VISHNU BHISE AND OTHERS

VERSUS

**VIMAL NAMDEV TAT DIED THROUGH HER LRS NAMDEV WAMAN TAT
AND OTHERS**

...

Advocate for Petitioners : Mr. Irpatgire A.N.

CORAM : MANGESH S. PATIL, J.

DATE : 12.07.2022.

PER COURT :

Heard.

2. In a suit for partition, at the fag end the respondents'/plaintiffs' application (Exh. 69) has been allowed enabling them to carryout amendment so as to correct the description of one of the suit properties.

3. The petitioners are the defendants who are aggrieved by the order.

4. Learned advocate for the petitioners would submit that in the written statement itself a specific objection was raised in paragraph No. 3 disputing the description of the suit property bearing Gat No. 192. Even an objection was raised regarding absence of any rough sketch as is required to be filed under Order VII Rule 3 of the Code of Civil Procedure. He would submit that in spite of such specific objection neither any amendment was sought immediately but even the respondents' witness during his cross-examination stuck to the pleadings

and denied any error in describing the suit property.

5. The learned advocate would submit that in spite of such state of affairs, without assigning sufficient and cogent reasons respondents/plaintiffs sought to amend the plaint and the trial court ignoring the aforementioned facts and circumstances has allowed the application. If such an amendment at the belated stage is allowed to be carry out, it would cause serious prejudice to the petitioners as it would amount to setting their stand at naught.

6. It is to be borne in mind that the suit is for general partition wherein the respondents/plaintiffs have been asserting that the suit properties are the ancestral and joint family property. It is not their case that they have been in exclusive possession of any portion of the joint family property, to the exclusion of the petitioners. They are not claiming any perpetual injunction as well. If such is the state of affairs, one cannot comprehend as to how description of the suit property would be a decisive factor.

7. True it is that in spite of having been put to notice in view of the specific objection raised in the written statement, the respondents/plaintiffs allowed the suit to continue as it is and even their witness was bold enough to deny any suggestion regarding incorrect description of the suit property. However, bearing in mind the fact that it is a suit for partition and not a suit for possession of an encroached portion or a suit

for injunction, it cannot be said that the petitioners would be put to any prejudice even if the description is now sought to be corrected in tune with their stand in the written statement.

8. At the cost of repetition, description of the suit properties in a suit for partition simplicitor without any further relief than separation of the shares by metes and bounds would not admit of any dispute as to the description of the suit property as a genuine defence.

9. Taking into account the fact that the application was being moved belatedly, the trial court has imposed the costs which should satisfy the petitioners.

10. There is no substance in the Writ Petition. It is dismissed.

(MANGESH S. PATIL, J.)

mkd/-