

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

WRIT PETITION NO.6207 OF 2014

1. Jainabi w/o Meheboob Ali Sheikh
Age: 55 years, Occu: Household,
R/o: Bhoi Galli, Osmanabad.

2. Gausiya w/o Abdul Sharif
Age: 40 years, Occu: Household,
R/o: Khirni Mala, Osmanabad.

3. Najira w/o Sharif Shaikh
Age: 38 years, Occu: Household,
R/o: Kondawa, Pune.

4. Mumtaj w/o Rafique Chaudhari
Age: 40 years, Occu: Household,
R/o: Laskar Chowk, Solapur,
Tq. & Dist. Solapur.

5. Babulal Maheboob Ali Sheikh
Age: 40 years, Occu: Agriculture,
R/o: Survey No.327,
Bembli Road, Osmanabad

6. Kalawati Maheboob Ali Sheikh
Age: 55 years, Occu: Household
R/o: Survey No.327,
Bembli Road, Osmanabad.

... Petitioners
(Orig. Defendant Nos.1 to 6)

Versus

1. Sheikh Bashir Sheikh Amir
Age: 68 years, Occu: Business,
and Agriculture
R/o: Nehru Chowk, Khatik Galli
Osmanabad.

2. Raunak Ali S/o Azhar Ali Syed
Age: 33 years, Occu: Agriculture,
R/o: Bhaldarpura, Beed
Tq. & Dist. Beed

3. Mahammad Shabir Noormohammad Tanwar
Age: 30 years, Occu: Agriculture &
Business
R/o: Bashir Colony, Nanded
Tq. & Dist. Nanded.

4. Yejaj Mohammad Bashir
Age: 40 years, Occu: Agriculture &
Business
R/o: Bashir Colony, Nanded
Tq. & Dist. Nanded

5. Mohammad Saber Mohammad Hanif Sheikh
Age: 35 years, Occu: Agriculture &
Business
R/o: Darga Road, Osmanabad.

6. Maqsud Hamid Jahagirdar
Age: 38 years, Occu: Agriculture &
Business
R/o: Kandar, Tq. Karmala Dist. Solapur.

7. Mohammad Gaus Mohammad Hanif Shaikh
Age: 39 years, Occu: Agriculture & Business
R/o: Darga Road, Osmanabad.

8. Muzzamil Fakir Ahmed Sheikh
Age: 32 years, Occu: Agriculture & Business,
R/o: Wanwadi, Pune-40

9. Navnath s/o Deorao Shinde
Age: 57 years, Occu: Agriculture & Business,
R/o: Kandar Tq. Karmala Dist. Solapur.

... Respondents
(Orig. Defendant Nos.7 to 14)

...

Mr. Mayur Salunke, Advocate for the Petitioners

Mr. A. M. Gholap h/f Mr P. P. More, Advocate for Respondent No.1

Mr. V. B. Deshmukh, Advocate for Respondent Nos.2 to 9

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 11th January, 2022

ORAL JUDGMENT:

. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition is directed against the order dated 03/05/2014 passed by the 4th Joint Civil Judge, Junior Division, Osmanabad below Exhibit-119 in Regular Civil Suit No.66/2013, thereby allowing the amendment application filed by the plaintiff.

3. The respondent No.1/original plaintiff filed Regular Civil Suit No.66/2013 seeking a declaration that he is the owner of suit property bearing Gut No.327 Adm. 13 A. 7 Guntha, situated at Osmanabad in Municipal Council area. The suit was resisted by the petitioner and others by filing their written statements. Thereafter, by filing applications Exhibits 20 & 22, the plaintiff sought amendments in the plaint, which was allowed. Accordingly, he has carried out the amendments.

4. The plaintiff, thereafter, by filing application (Exhibit-119), sought amendments by deleting some pleadings and inserting some

pleadings. So also the prayer was sought to be inserted. This application was opposed by the petitioner and others. The trial court allowed the said application by imposing cost of Rs.1200/-. This order is impugned in the present writ petition.

5. Heard the learned advocate for the petitioners, learned advocate for respondent No.1 and the learned advocate for Respondent Nos.2 to 9.

6. The learned advocate for the petitioners submits that the impugned order is unseasoned order and admissions given by the plaintiff are sought to be taken away and therefore, the impugned order is unsustainable. In support of his arguments, he relied on **Heeralal Vs. Kalyanmal** reported in 1998 (1) SCC 278 and **M/s. Revajeetu Builders and Developers Vs. M/s. Narayanaswamy and Sons and Ors.** reported in AIR 2009 SC (Supp) 2897.

7. The learned advocate representing respondent Nos.2 to 9 adopted the arguments of the petitioners. In addition, he submitted that earlier also, the plaintiff was permitted to amend his pleadings in view of the orders passed below Exhibits 20 & 22. Now, by the proposed amendment, he is withdrawing his admissions, which should not be permitted.

8. The learned advocate for respondent No.1, on the other hand, supported the impugned order submitting that there is no withdrawal of admissions and the trial court has rightly allowed the application

by observing that nature of suit i.e. suit for permanent injunction and declaration will remain the same and therefore, the proposed amendment will not change the nature of suit. According to him, since the trial has not commenced, the impugned order is justified.

9. In Para-10 of the plaint, the plaintiff has given certain admissions that, “a nominal partition deed was prepared on 31/10/1981 which was not to be acted upon. The said partition deed is signed by the plaintiff and others”. In Para-11 of the plaint, it is stated that, “after the execution of the nominal partition deed, the disputed property was in possession of the plaintiff”. In Para-15 of the plaint, it is averred that “by misusing the nominal partition deed 1981 on the basis of that documents, without knowledge of the plaintiff, name of defendant was entered and by taking disadvantage of the name of the defendant recorded to the disputed property, consent decree was obtained in R.C.S. No.549/2012”.

10. The defendants in their written statements have accepted the execution of the partition deed and have also further pleaded that on the basis of partition deed, Mahboob Ali executed sale deed of a portion of the disputed land in favour of one Dr. Seema Kulkarni and the plaintiff has signed the said sale deed as a witness.

11. Taking into consideration the pleadings and factual matrix, it is clear that by way of amendment, the plaintiff is withdrawing the admissions given in the plaint, which cannot be permitted in law and facts of the present case. The trial court has erred in coming to the

conclusion that the nature of suit does not change and therefore, amendment needs to be permitted. The trial court has failed to take into consideration the fact that the admissions given by the plaintiff are being withdrawn by him by way of amendment, which is not permissible in law.

12. The ratios in Heeralal (Supra) and M/s. Revajeetu Builder & Developers (Supra) supports the case of the petitioners.

13. In M/s. Revajeetu Builders & Developers (Supra), the Supreme Court has observed thus;

“22.. In M/s Modi Spinning & Weaving Mills Co. Ltd. & Another v. Ladha Ram & Co.⁴, the trial court while rejecting an application under Order VI Rule 17 said that the repudiation of clear admission is motivated to deprive the plaintiff of the valuable right accrued to him and it is against law. The High Court on revision affirmed the judgment of the trial court and held that by means of amendment the defendant wanted to introduce an entirely different case and if such amendments were permitted it would prejudice the other side.

23. In the said case, a three-Judge bench of this court observed:

"10. It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paragraphs 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial Court."

14. Since in the case in hand, the plaintiff is withdrawing the admissions given by him in the plaint, the amendment is not permissible. For the aforesaid reasons, the impugned order cannot sustain and the same is liable to be quashed and set aside.

15. In the result, the following order:

ORDER

(i) Writ Petition is allowed.

(ii) The impugned order passed by the 4th Joint Civil Judge, Junior Division, Osmanabad below Exhibit-119 in Regular Civil Suit No.66/2013, is quashed and set aside.

(iii) The application Exhibit-119 is dismissed.

(iv) Rule is made absolute in the above terms with no costs.

(NITIN B. SURYAWANSHI, J.)