

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

5 CIVIL APPLICATION NO.12377 OF 2022
IN WP/7077/2008 WITH WP/7077/2008

DNYANESHWAR UTTAMRAO JADHAV
VERSUS
UTTAMRAO RANGNATHRAO JADHAV THR MATHURABAI DIED AND
OTHERS

Shri. S. T. Shelke, Advocate for the applicant
Shri. Sandesh Patil, Advocate h/f Shri. A. B. Karande, Advocate for
respondent Nos. 3 to 8.

**CORAM : M. G. SEWLIKAR, J.
DATED : 15th SEPTEMBER, 2022**

PER COURT :-

1. Heard.
2. The applicant / original plaintiff filed Regular Civil Suit No. 233 of 2002 for partition and separate possession. During the pendency of the suit, the applicant filed application for amendment of plaint. The learned Trial Court rejected the application for amendment on the ground that it was filed after the conclusion of the evidence. The learned Trial Court further observed that plaintiff can file a separate suit for partition.
3. Learned counsel Shri. Patil for the respondent submits that plaintiff/applicant was well aware of these properties. Still he exhibited negligence because of which amendment cannot be allowed.

If this Court comes to the conclusion that amendment needs to be allowed it should be done with heavy cost.

4. Suit is for partition and separate possession. All the properties ought to be added in a suit for partition. It is true that the properties which are sought to be added were disposed of prior to the filing of the suit. The plaintiff was aware that properties were disposed of and still he did not take any step till the conclusion of the evidence. Therefore, I deem it appropriate to allow the amendment application subject to cost of Rs.35,000/- In view of this following order is passed.

ORDER

- (i) Petition is allowed subject to payment of Rs.35,000/- (Rupees Thirty Five Thousand only).
- (ii) Order of the learned Jt. Civil Judge Junior Division, Georai, Dist. Beed dated 25th September, 2008 in Regular Civil Suit No. 233 of 2002 below Exhibit 65 is set aside.
- (iii) Amendment application is allowed. Payment of cost is a condition is precedent.

[M. G. SEWLIKAR, J.]

ssp