

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

WRIT PETITION NO. 8482 OF 2022

1. Uttam Gena Darade,
Age : 80 Years, Occu. : Agriculture,
2. Sitabai Gowardhan Darade,
Age : 55 Years, Occu. : Agriculture,
3. Narayan Gowardhan Darade,
Age : 37 Years, Occu. : Agril.,
4. Rama Gowardhan Darade,
Age : 30 Years, Occu. : Agril.,
5. Kadubai Gowardhan Darade,
Age : 32 Years, Occu. : Agril.,
6. Laxman Gena Darade,
Age : 55 Years, Occu. : Agri.
7. Laxmibai Pandharinath Darade,
Age : 80 Years, Occu. : Agri.
8. Saithram Pandharinath Darade,
Age : 54 Years, Occu. : Agri.
9. Abhiman Pandharinath Darade,
Age : 45 Years, Occu. : Agri.
10. Changunabai Pandharinath Darade,
Age : 59 Years, Occu. : Agri.
11. Lata Hanumant Khandare,
Age : 53 Years, Occu. : Agri.
12. Kaushailabai Datta Khandare,
Age : 43 Years, Occu. : Agri.

13. Yamunabai Santram Kekane,
Age : 55 Years, Occu. : Agri.

All Above

R/o Karegavan, Tal. & Dist. Beed.

.. Petitioners

Versus

1. Tuljiram Tukaram Darade,
Age : 83 Years, Occu. : Agri.
2. Sopan Sakharam Darade,
Age : 63 Years, Occu. : Agri.
3. Ramhari Sakharam Darade,
Age : 52 Years, Occu. : Agri.
4. Dattaray Tulshiram Darade,
Age : 31 Years, Occu. : Agri.

All Above

R/o Karegavan, Tal. & Dist. Beed.

5. State of Maharashtra,
Through District Collector,
Beed.
6. Special Land Acquisition Officer,
Jayakwadi Project, Beed. .. Respondents

Shri D. R. Irale Patil, Advocate for the Petitioners.

Shri R. K. Jadhavar, Advocate for the Respondent Nos. 1 to 4.

Shri K. B. Jadhavar, A.G.P. for the Respondent Nos. 5 and 6.

CORAM : SANDEEP V. MARNE, J.

DATE : 12TH OCTOBER, 2022.

ORAL JUDGMENT :

. Rule. Rule made returnable forthwith. With the consent of parties matter is taken up for final hearing.

2. By this petition, petitioners assail order dated 27th July, 2022 passed by the Civil Judge Senior Division – II, Beed below Exhibit 123 in R.C.S. No. 352 of 2012, thereby allowing the application filed by the defendants for amendment of their written statement.

3. Mr. Irale Patil, learned counsel appearing for the petitioners submits that the application for amendment was filed at a belated stage, particularly after the trial had commenced and the evidence of the plaintiffs was recorded. He would submit that the proposed amendment does not fit within the scope of proviso to Order VI Rule 17 of the Code of Civil Procedure. Mr. Irale Patil would further submit that the defendants have already pocketed 50% amount of compensation and that they were attempting to pocket remaining 50% share as well, despite plaintiffs' suit R.C.S. No. 352 of 2012 being decreed thereby determining plaintiffs share in the property.

4. Per contra, Mr. Jadhavar, learned counsel appearing for the respondent Nos. 1 to 4 supports the order passed by the Trial Court and submits that the entire objective behind remanding the suit for fresh trial was to give an opportunity to the parties to establish the nature of property – ancestral or self acquired. He

would submit that the amendment is necessary to determine that question of controversy.

5. I have perused the documents on record. The suit of the plaintiff was initially decreed by the Trial Court by judgment and decree dated 14.06.2016 thereby declaring that the plaintiffs have 1/2 share in the compensation amount awarded in L.A.R. No. 71 of 2006. The judgment and decree of the trial Court came to be questioned in appeal by the original defendants before the District Judge Beed. The District Judge arrived at a finding that the Trial Court has failed to determine the most vital issue about the nature of property whether it is ancestral or self acquired ?

6. It is also pertinent to note that, the original defendants had filed an application for amendment as well as an application for production of additional evidence in pending appeal. Both the applications remained pending before the Appellate Court. However, before the applications could be decided, the Appellate Court arrived at a conclusion that in absence of a specific issue of nature of property being determined and decided, the very judgment and decree passed by the Trial Court was erroneous. Therefore, the Appellate Court proceeded to remand the suit for trial by framing the issue as suggested by it and by giving opportunity to both the parties to adduce evidence in support of that issue. The remand order is dated 19.10.2019.

7. After suit was remanded, the plaintiff filed affidavit of

evidence on 01.01.2022 and cross examination of the plaintiffs' witness has also commenced. The same appears to be still incomplete, though Mr. Irale Patil has reservations about this fact and he contends that the cross examination of the plaintiffs' witness has been completed. Be that as it may. The defendants moved an application for amendment of written statement on 14.06.2022. The amendment is sought essentially to introduce a case that the suit property is self acquired property of Tukaram Rama Darade. The application for amendment was resisted by the plaintiffs by filing their say. The Trial Court has proceeded to allow the application for amendment by its order dated 27th July, 2022.

8. Though ordinarily amendment cannot be permitted after commencement of trial, the Court enjoys necessary powers to permit such amendments even after commencement of trial when it comes to a conclusion that the party could not raise the matter earlier despite due diligence. There are peculiar facts in the present case. The suit was already decreed and has been remanded with a direction to the Trial Court to determine and decide the issue about exact nature of the property. After remand, the Trial Court is now expected to decide whether suit property is ancestral or self acquired. In my opinion, the application moved to incorporate pleadings to the effect that the suit property is self acquired property would only assist the Trial Court in determining the issue. The application could not have been rejected only on the ground that same was moved after the

Trial has commenced. Similar application for amendment as well as application to adduce additional evidence was filed by the defendants before the Appellate Court, which remained pending. Since the suit itself was remanded for fresh Trial for deciding issue of nature of property, those applications were not decided by the Appellate Court. In these circumstances, merely because a fresh trial after remand has commenced on 01.11.2021 the same would not have precluded the Trial Court from allowing the application for amendment considering the peculiar facts and circumstances of the present case.

9. Mr. Irale Patil has relies upon the judgment of the Apex Court in **M. Revanna Vs. Anjanamma (Dead) by L.Rs. and others** reported in **(2019) 4 SCC 332**, which reiterates well established principle that amendment cannot be sought as a matter of right and cannot be permitted except under the condition stipulated in the Proviso. It also held that the burden of proving, “due diligence” is on the shoulders of the party seeking amendment. This proposition cannot be disputed. However, in the instant case the facts are peculiar, as discussed hereinabove. The very objective behind remanding the suit is to decide the exact nature of the property. By amending the written statement, defendants want to incorporate pleadings to the effect that the property is self acquired property. On the other hand, it is the case of the plaintiffs that the property is ancestral property. In my opinion, the amendment would only enable the trial court to effectively decide exact nature of controversy that it

is expected to decide after remand of the suit. In view of the peculiar facts and circumstances of the present case, the judgment in the case of **M. Revanna** (supra) would not have any application.

10. Consequently, I do not find any error being committed by the Trial Court in allowing the application for amendment. The petition is devoid of merits. Same is dismissed without any orders as to costs. Rule is discharged.

[SANDEEP V. MARNE, J.]

bsb/Oct. 22