

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12994 OF 2017

Suryakant Pandurang Darole,
V E R S U S

..Petitioner

Pushpa Yadav Kale and others

.. Respondents

...
Advocate for Petitioners : Parag V Barde
...

CORAM : PRITHVIRAJ K. CHAVAN, J.
DATE : 19.04.2022

FINAL ORDER :-

A challenge in this petition as to an order dated 25th April, 2017 passed by the learned Joint Civil Judge, Junior Division, Sangamner, District Ahmednagar below Exh. 58 in Regular Civil Suit No. 13 of 2010, wherein the learned trial Judge rejected the application moved by the petitioner-plaintiff under Order VI Rule 17 of the Code of Civil Procedure.

2. A few facts germane for disposal of the petition can be summarized as follows :-

A suit for declaration and perpetual injunction has been filed by the petitioner in respect of suit properties described in the plaint. During the pendency of the suit, the petitioner discovered a notarized will deed in the cup-board of the house while cleaning the same in the eve of Dipawali. Till date, the petitioner was

unaware of any such notarized will executed by Bhagwat Jabaji Pawar. In order to resolve the dispute effectively and finally the petitioner sought to amend the plaint on the basis of the said will-deed. However, the trial Court by the impugned order rejected the application by observing that if the proposed amendment is allowed it would change the nature of the suit.

3. I have heard Mr. P. V. Barde, learned counsel for the petitioner. None appears on behalf of the respondent.

4. Learned counsel Mr. Barde, has invited my attention to the proposed amendment, by which, what is sought to be added in the plaint is the right which would be accrued to the petitioner to claim ownership of the suit properties by virtue of the said notarized will of the deceased Bagawat Jabhaji Pawar, by which, the testator had bequeathed the suit properties upon the sole legatee i.e. the petitioner, after his death. This would, by no stretch of imagination will change the nature of the suit. It would, at the most be an additional claim of the petitioner by virtue of discovery of new facts in the form of a notarized will. The aspect as to whether it was, in fact, a genuine last will of Bhagwat Jabaji Pawar will be decided on its own merits during the trial. No prejudice would be caused to the respondents- defendants if the proposed amendment is allowed.

5. As such the impugned order needs to be set-aside as the learned trial Court has committed an error in the law and facts to correctly appreciate the impact of the proposed amendment. As such, following order is expedient :-

ORDER

- (I) The petition is allowed.
- (ii) The impugned order dated 25.04.2017 passed below Exh. 58 by the learned Civil Judge, Junior Division, Sangamner, District Ahmednagar in Regular civil Suit No. 13 of 2010 is set-aside.
- (iii) The petitioner shall amend the plaint within fourteen days from the date of passing of this order.
- (iv) After amendment of the plaint, the defendant is permitted to make a consequential amendment if any.
- (v) The trial Court is directed to expedite and dispose of the suit on its own merit by giving due opportunities of hearing to both the sides.
- (vi) The petition stands disposed of in aforesaid terms.
No order as to costs.

**(PRITHVIRAJ K. CHAVAN,)
JUDGE**

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