

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4365 OF 2021

Tejashree Mahavir Mangave

..Petitioner

Versus

Malti Vasantlal Shah

Since deceased through legal heirs

Padma Rameshchandra Shah

Since deceased through legal heirs

Rashmika Hitesh Ajmera and Ors.

..Respondents

Mr. N. J. Patil i/by Akshay Neminath Patil, for the Petitioner.

Mr. Ketan Dhavale i/by Mandar Limaye, for the Respondent Nos.1 to 4.

CORAM : NITIN W. SAMBRE, J.

DATE : 16th FEBRUARY, 2022

PC.

1. The petitioner/plaintiff No.5 pursuant to provisions of Order I Rule 10 of the CPC was impleaded as plaintiff on 6th August, 2018 and moved a prayer for amendment vide Exh.168 thereby permitting incorporation of certain property which he claims to be of the joint family.

2. The application Exh.168 for amendment came to be partly allowed vide impugned order dated 21st December, 2019. Challenge to the impugned order is to the extent excluding the amendment in respect of properties bearing Nos.1C, 1D and 1E.

3. The contesting respondents i.e. Respondent Nos.5, 6 and 7 though served, have chosen not to contest the claim before this Court. The contentions of learned counsel for the petitioner are, for effectively deciding issue which is raised in the suit for partition, law contemplates that entire property of the joint family should be brought into common hotchpotch. If the joint family properties are not brought into common hotchpotch, same is detrimental to all the parties. According to him, it is in the interest of all the parties, joint family properties are mentioned in the suit. He would claim that there is delay on the part of the petitioner in moving an application and that being so, the impugned order is liable to be quashed and set aside.

4. Learned counsel for respondent Nos.1 to 4, who are co-plaintiffs has supported the contentions.

5. Considered rival submissions as were canvassed before the Court below as are reflected in the impugned order at Exh.168.

6. Whether the properties mentioned bearing Nos.1C, 1D and 1E are the ancestral properties and whether the parties to the suit succeed to the same can be an issue of adjudication before the Trial Court. However, it is worth to mention here that such property which is alleged to be of the joint family must be part of the partition suit and such description of the property in the suit claim is necessary for deciding rival claims of the parties. In a suit for

partition, status of the plaintiffs and defendants is common in interest. That being so, the Court below, in my opinion, committed an error in refusing to grant amendment.

7. This Court is required to sensitive to the fact that petitioner/plaintiff No.5 was impleaded in the suit on 6th August, 2018 and immediately thereafter he has taken steps for amendment.

8. That being so, the petitioner cannot be blamed for the delayed moving of application for amendment. In view of above, the order impugned to the extent of disallowing amendment in respect of incorporation of property bearing Nos.1E, 1D and 1E is hereby set aside. The amendment to that extent stands allowed.

9. The petition stands allowed in the above terms.

[NITIN W. SAMBRE, J.]