

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4894 OF 2021

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Shri. Somnath Damudeshmukh

..Petitioner

Versus

The State of Maharashtra and Anr.

..Respondents

Mr. Harshal Mirashi, for the Petitioner.

Mr. S. D. Rayrikar, for Respondent No.1 – State.

Mr. D. J. Deshmukh, for Respondent No.2.

CORAM : NITIN W. SAMBRE, J.

DATE : 6th JANUARY, 2022

PC.

1. Vide order impugned dated 5th November, 2019 passed below Exh.23 prayer for amendment moved under Order VI Rule 17 along with impleadment of party under Order I Rule 10 came to be rejected.

2. The prayer in the petition resisted by the learned counsel Mr. D. J. Deshmukh appearing for respondent No.2 on the ground that if the amendment is granted the nature of the relief claimed in the suit will be substantially changed.

3. I have considered the submissions.

4. The trial in the suit is yet to commence. By way of

amendment, the petitioner in addition to earlier existing prayer of permanent injunction has sought for declaration of ownership over the suit property.

5. With the assistance of rival parties, I have perused the pleadings.

6. It is the claim of the petitioner that his grandfather became owner of the property after he was declared as protected tenant.

7. Since he claimed to have inherited ownership over the suit property, it is alleged that the cost declared by the revenue authority was already paid. In my opinion, the amendment which goes to the root of the matter needs to be granted. Even otherwise the respondents/defendants are not taken by surprise and to avoid further multiplicity of litigation, the prayer for amendment is very much justified.

8. The amendment is sought in relation to the very subject matter of the suit and the only improvement by way of amendment is impleadment of parties i.e. sister of the plaintiff and the prayer for declaration of ownership. In that view of the matter, in my opinion, order impugned dated 5th November, 2019 passed below Exh.23 needs to be quashed and set aside. As such, the application below Exh.23 stands allowed. The petitioner to carry out amendment in

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Civil Suit No.91 of 2016 within four weeks from today subject to deposit of cost of Rs.10,000/- before the Court below before carrying out amendment.

9. As such, writ petition stands disposed of.

10. The Trial Court will be at liberty of apportionment of the cost amount.

11. Needless to clarify that this Court has not gone into the merits of the rival pleadings.

[NITIN W. SAMBRE, J.]