

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

WRIT PETITION NO.7021 OF 2008

Archana Jaywantrao Salokhe and Ors.

..Petitioners

Versus

Sau. Sudha Maruti Yadav and Ors.

..Respondents

Mr. N. J. Patil, for the Petitioners.

Mr. Bhooshan R. Mandlik, for the Respondent No.3.

CORAM : NITIN W. SAMBRE, J.

DATE : 10th MARCH, 2022

PC.

1. In a suit for partition being RCS No.368 of 2002 application Exh.75 for amendment of written statement moved by the petitioners/defendant Nos.2 to 4 came to be rejected vide impugned order dated 28th August, 2008. Such rejection is based on the ground that the trial in the suit has commenced as the evidence of examination-in-chief is already placed on record by the respondent/plaintiff and while earlier amendment was carried out, the fact was well within the knowledge.

2. The fact remains that the present petition in which the order of 2008 is under challenge remained pending for last about 14 years and the suit proceedings were stayed.

3. What is sought to be incorporated by way of amendment

is transfer of part of the suit property to the defendant No.5 and transfer by said defendant to several other persons in a suit for partition and separate possession

4. Counsel for the respondent No.5 would urge that his impleadment is not necessary. The contention of counsel for the defendant No.5 i.e. respondent No.3 is, the Court below is justified in rejecting the prayer as the defendants have failed to follow the principle of due diligence. The fact remains that such transfer by defendant No.5 of his undivided share will definitely have bearing over the rights of the parties to the suit. Each of the party to the partition suit have interest in common. In the aforesaid background, amendment which is sought in the written statement appears to be justified and also necessary for effectively adjudicating the claims. That being so, the order impugned dated 28th August, 2008 passed below Exh.75 is quashed and set aside. The said application Exh.75 stands allowed subject to payment of cost of Rs.5,000/- to be deposited in the Court below.

5. The petition as such stands disposed of.

6. The Court below shall pass appropriate apportionment order of the said cost which is deposited within four weeks from today.

7. Since the suit is pending for last about twenty years,

hearing of the same is expedited.

8. The suit be decided in any case within one year from today.

9. Needless to clarify that consequences of allowing present amendment application, necessary additional affidavit of examination-in-chief can be preferred by the plaintiff in the suit proceedings.

[NITIN W. SAMBRE, J.]