

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2472 OF 2018

1) Panjabrao s/o Kashinath Gawande,
Aged about 65 years,
Occupation – Cultivator,

2) Bhalchandra Panjabrao Gawande,
Aged about 37 years,
Occupation – Cultivation,

Both R/o Village Uti, Taluka-Mahagaon,
District – Yavatmal.

.... **PETITIONERS**

VERSUS

1) Sau. Bayabai w/o Ramrao Suryawanshi,
Aged about 55 years,
Occupation – Household,
R/o Hardaf, Tahsil – Hadgaon,
District – Nanded.

2) Sau. Nanibai w/o Dattarao Wankhede,
Aged about 67 years,
Occupation – Household,
R/o Uti, Tahsil – Mahagaon,
District – Yavatmal.

3) Atmaram s/o Kashinath Gawande,
Aged 50 years, Occupation – Cultivator,
R/o Uti, Tahsil – Mahagaon,
District – Yavatmal.

4) Sau. Godawaribai w/o Deorao Wankhede,
Aged about 38 years,
Occupation – Household,
R/o Kharus (Sakhara), Tahsil-Umarkhed,
District – Yavatmal.

5) Sau. Indirabai w/o Sheshrao Tawar,
Aged about 66 years,
Occupation – Household,
R/o Sambhaji Nagar, Near Hanuman
Mandir, Hastgaon, Tq. Hatgaon,
District – Nanded.

6) Sau. Gayabai w/o Prataprao Kawale,
Aged about 64 years,
Occupation – Household,
R/o Dabhadi, Tahsil – Kalamnuri,
District – Hingoli.

.... RESPONDENTS

Mr. S.U. Nemade, Counsel for the petitioners,
Mr. G.M. Kubde, Counsel for respondent 1,
None for other respondents.

CORAM : ROHIT B. DEO, J.
DATED : 1st APRIL, 2022

ORAL JUDGMENT :

Heard. **Rule.** Rule is made returnable forthwith. With consent,
the petition is heard finally.

2. The petitioners are the defendants in suit for partition brought by
respondents 1 and 2-plaintiffs for decree of partition and separate
possession. The petitioners are aggrieved by the order dated
14-3-2018 rendered by the learned Civil Judge (Senior Division), Pusad
whereby the application preferred by the plaintiffs under Order VI Rule
17 of the Civil Procedure Code (Code) seeking permission to amend the
suit plaint is allowed.

3. The plaintiffs, by amending the suit plaint, sought to include certain agricultural fields in the suit property. This application is allowed by the order impugned.

4. The learned Counsel Mr. S.U. Nemade has twin submissions to canvass. The first submission is that the evidence is concluded and the application under Order VI Rule 17 of the Code is preferred belatedly at the stage of arguments. I am not impressed. The Court cannot be oblivious to the fact that the suit is for partition. It appears to be well settled position of law that in a suit for partition, in order to avoid multiplicity of litigation, inclusion of property can be allowed in deserving cases even after the preliminary decree. In the present matter, even the preliminary decree is yet to be passed. It is in this view of the matter that I find no substance in the submission that the application seeking amendment ought to have been rejected on the ground of delay.

5. The other submission of the learned Counsel Mr. S.U. Nemade is that although a contentious issue, the learned trial Judge has predetermined that the properties which are included, are joint family properties. Mr. S.U. Nemade would emphasize that some properties which are included by the amendment, do not even belong to the

parties and in any event, the properties are not joint family properties.

6. While *prima facie* view appears to have been taken in paragraph 8 that the properties are joint family properties, it is clarified that all the questions are left open. The nature and the ownership of the properties which are included by amending the suit plaint will have to be independently determined by the learned trial Judge on the basis of evidence uninfluenced by any *prima facie* view taken while allowing the amendment application. Subject to the observations supra, I see no reason to interfere with the order impugned.

7. The petition is dismissed with a direction to the learned trial Judge to decide the suit expeditiously.

JUDGE

adgokar