

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

30 WRIT PETITION NO.1069 OF 2023

**ANNA LAXMAN KAMTHE AND OTHERS
VERSUS
ASARAM LAXMAN KAMTHE DIED PER
LRS DHONDABAI ASARAM KAMTHE AND ANOTHER**

...

Advocate for Petitioners : Mr. Chaya E. Gaikwad

...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 01-02-2023

PER COURT :

. Heard.

2. By this petition, the petitioners challenge two orders dated 22.12.2022 passed below Exhs.88 and 90 in Regular Civil Suit No. 749 of 2018. Regular Civil Suit No.749 of 2018 was instituted by the petitioner seeking declaration of ownership and perpetual injunction in respect of Gat No.199. It is the case of the petitioner that Gat No.199 was the joint family property, which came to the share of the petitioner in the partition effected in the year 1980, pursuant to which mutation entry no.91 was effected.

3. Learned counsel for the petitioner submits that the mutation entry was subject matter of revenue proceedings and the same is pending and subsequent thereto an application for

amendment came to be filed in as much as the suit for declaration of ownership was sought to be amended into a suit for partition and separate possession and for setting aside the sale deeds which were executed in respect of joint family properties.

4. Considered the submissions. The application for amendment has been filed at the stage when the suit is fixed for the final arguments. The relief claimed in Regular Civil Suit No. 749 of 2018 was declaration of ownership based on a previous partition. By the amendment application, the petitioner is now seeking the relief of partition and separate possession of all the joint family properties including Gat No.199. Considering the proposed amendments, the Petitioner is seeking to introduce a new case and the nature of the suit from declaration of ownership is sought to be changed to suit for partition and possession. The initial suit proceeded on the basis that in the previous partition, Gat No 199 came to the share of the Petitioner, whereby as per the proposed amendment, the case of previous partition is given up and completely new cause of action is set up. The cause of action for seeking proposed amendment is setting aside the mutation entry, which cannot entitle the petitioner to seek an amendment of this nature.

5. Apart from the above, the admitted position is that the

suit is at the stage of final argument and hence the proviso to Order-VI, Rule -17 of the Code of Civil Procedure is required to be satisfied by the petitioner. The proposed amendment is at post trial stage and the application does not set out any explanation to meet the mandatory requirements of the proviso to Order VI Rule 17 of the Code.

6. As the proposed amendments cannot be permitted consequently the application at Exh.90 for adding the parties in whose favour the subsequent transfer has been effected, cannot also be permitted.

7. For the reasons stated above, the petition is devoid of merits and stands dismissed.

(SHARMILA U. DESHMUKH, J.)

GGP