

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

WRIT PETITION NO. 2423 OF 2023

Bhausahab Murlidhar Lohakare
and others

.. Petitioners

Versus

Archana Rajendra Chavan and others .. Respondents

Shri Avinash M. Reddy, Advocate for the Petitioners.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 28TH FEBRUARY, 2023.**

FINAL ORDER :

. Petition takes an exception to the order dated 21st April, 2022 passed by the Trial Court in R.C.S. No. 43 of 2016 permitting the respondent Nos. 1 and 2/plaintiffs' application for amendment of the plaint.

2. R.C.S. No. 43 of 2016 was instituted by the plaintiffs i. e. respondent Nos. 1 and 2 herein seeking partition and separate possession of the joint family properties and for a declaration that the partition which was carried out by the defendant No. 5 therein i. e. the petitioner No. 5 herein is illegal.

3. By an application dated 17th September, 2021, the respondent Nos. 1 and 2 sought amendment of the plaint. By the proposed amendment the respondent Nos. 1 and 2 sought the

addition of the parties as well as amendment in the body of the plaint. The application for proposed amendment came to be objected by the petitioners by their reply dated 06th October, 2021. By the order dated 21st April, 2022, the application for amendment came to be allowed.

4. Heard. Learned counsel appearing for the petitioners submits that the application for amendment which has been filed includes a prayer for adding parties to the suit which prayer can be sought only in an application filed under Order I Rule 10 of the Code of Civil Procedure (for short "Code"). He would further submit that it is not clear as to why proposed parties who are sought to be added are necessary or proper parties and the application contains no details. He would further submit that by the proposed amendment the nature of the suit is sought to be changed. He has invited the attention of the Court to the findings of the Trial Court and would submit that the Trial Court has granted the amendment considering that it is pre-trial amendment and there is no reasoning in the impugned order. He would further submit that the reply which has been filed by the petitioners has not be considered in the impugned order.

5. R.C.S. No. 43 of 2016 was instituted by the respondent Nos. 1 and 2 seeking a partition of the joint family property. It is admitted position that the evidence has not yet started and as such application which has been filed for amendment is pre-trial amendment. It is settled position that all pre-trial amendments

are to be liberally allowed and at the stage of considering application for amendment merits of the amendments are not required to be gone into. As far as submission of the learned counsel for the petitioners that the reply of the petitioners has not been considered is concerned, a perusal of the reply shows that the petitioners have gone into the merits of the amendment and sought to deny the proposed amendments. At the stage of considering application for amendment, it is not necessary for the Trial Court to give a detailed reasoning as to the merits of the matter, which petitioners are seeking in the present case.

6. As regards contention that the application filed by the respondent Nos. 1 and 2 was for addition of parties as well as amendment of plaint and separate application under Order I Rule 10 of the Code ought to be filed is concerned, in my opinion, failure to quote relevant provision is not fatal to the application. It is clear from the tenor of the application and the contents thereof that application is filed under the provisions of Order I Rule 10 of the Code read with Order VI Rule 17 of the Code. As far as addition of the parties is concerned, there is genealogy which has been set out at paragraph No. 5 of the application and the amendment is sought for addition of the party as per genealogy. As far as amendments in the pleadings are concerned, the issue as to whether the same is permissible in law is something which has to be considered at the time of the trial. At this stage, it is not necessary to examine merits of the amendment. In my opinion, as the proposed amendment do not

change the nature of the suit in as much as even if the amendment is permitted, the suit is one for partition and separate possession. No infirmity can be found in the order of the Trial Court dated 21st April, 2022.

7. For the reasons recorded above, writ petition is misconceived and same is disposed of. No costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Feb. 23