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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2962 OF 2023

Gangadhar Bhimrao Jadhav

PETITIONER

VERSUS

Sushilabai Sidram Somwanshi and Others

RESPONDENTS

.....
Mr. Amit Shrikant Deshpande, Advocate for the petitioner
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th MARCH, 2023

ORDER :

1. Petitioner is aggrieved by order dated 10th January, 2023 passed by 5th Joint Civil Judge, Senior Division, Latur below Exhibit-100 in Regular Civil Suit No. 867 of 2012, thereby allowing the application filed by the plaintiff under Order VI, Rule 17 of the Civil Procedure Code.
2. The suit is filed for partition and separate possession of the ancestral properties. Three applications earlier filed by the plaintiff for amendment were allowed by the Trial Court. This is the fourth amendment application (Exhibit-100) which is allowed.
3. Heard learned advocate for the petitioner. Perused the grounds raised in the petition, documents annexed with the

petition and the impugned order.

4. It appears that the suit is pending for evidence of the plaintiff. The amendment is sought by the plaintiff on the ground that after obtaining seven twelve extract of the suit land, from the concerned Talathi, on 7th December, 2022, the plaintiff came to know that defendant No.2 / present petitioner has transferred portion of suit property in favour of his son Vishnu Gangadhar Jadhav. This fact was suppressed by him from the Trial Court, therefore, amendment is sought by the plaintiff that Vishnu Gangadhar Jadhav, being a necessary party, be allowed to be added as defendant No.6 in the suit. Said application is allowed by the Trial Court, observing that the suit is for partition and separate possession and, therefore, son of defendant No.2 namely Vishnu Gangadhar Jadhav is necessary party and it will be just and proper to allow the plaintiff to add him as party defendant. The proposed amendment is necessary to enable the Court to decide real question in controversy between the parties and it will not change nature of the suit. The Trial Court, therefore, by imposing cost of Rs.1000/- on the plaintiff, allowed application Exhibit-100.

5. Having heard the learned advocate for the petitioner and on going through the record, this Court is of the view that the

Trial Court has rightly allowed the application Exhibit-100. No prejudice is likely to be caused to the petitioner – defendant No.2 by addition of his son as party defendant, as admittedly, the suit is for partition and separate possession of the ancestral properties. Considering the fact that during pendency of the suit, a portion of the suit property is transferred by petitioner – defendant No.2 in his son's name, son of defendant No.2 is a necessary party to the suit. The aspect of due diligence is also addressed by the Trial Court, by imposing cost of Rs.1000/- on the plaintiff.

6. No illegality or perversity is found in the order impugned in the present writ petition. The writ petition, being devoid of merits, is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE