

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

962 WRIT PETITION NO.4286 OF 2023

Shalan Dilip Waghmare and Another .. Petitioners

Versus

Chabu Bajirao Vethekar (Dead)
Through LRs
Subhash Chabu Vethekar and Others .. Respondents

...

Advocate for Petitioners : Mr. Prakash Bhaushaeb Shirsath

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 14th JUNE, 2023

ORDER :

1. The petitioner is aggrieved by the order dated 20.02.2023 passed by the learned Jt. Civil Judge Senior Division, Shrigonda below Exh.148 in Regular Civil Suit No. 76 of 2008, thereby rejecting the application filed by the petitioner – plaintiff under Order-1, Rule-10 of the Code of Civil Procedure, 1908 (in short, 'C.P.C.') and Order-VI, Rule-17 of the C.P.C. for amendment in the plaint.

2. The petitioner - plaintiff filed suit for partition and separate possession of the ancestral properties. Recording of

evidence commenced and the plaintiff filed her evidence affidavit. During cross-examination a question was asked to the plaintiff that the deceased Bajirao Haba Vethekar had two sons and two daughters and also had another daughter namely Gangubai Kondiba Lagad, who is no more. The plaintiff claiming to be not knowing this fact, preferred application under Order-I, Rule-10 of the C.P.C. to add legal heirs of deceased Gangubai as party defendants and sought amendment to that effect in the plaint. The application is rejected by the Trial Court on the ground that the plaintiff has not filed death certificate of Gangubai Kondiba Lagad and Kondiba Lagad on record and there is no documentary evidence on record to show that Gangubai expired in the year 1998 and thereafter her son Bhima @ Bhimrao expired on 17.02.2003. Hence, the present petition.

3. Admittedly, the suit is for partition and separate possession. In that view of the matter, the parties proposed to be added by the petitioners appear to be necessary and proper parties to the suit. While rejecting the application filed by the petitioners, the Trial Court has adopted hyper technical approach. The defendants have not controverted the fact that the proposed defendants are legal heirs, on the contrary they have stated in their say that only with a view to deprive the

proposed legal heirs they were not added as party – defendants. In that view of the matter, the impugned order is quashed and set aside. The application at Exh.148 in Regular Civil Suit No. 76 of 2008 is allowed. The petitioners to carry out amendment within a period of two weeks from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE

GGP