

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 WRIT PETITION NO.2787 OF 2021

TARABAI DAGDU GAWALI
VERSUS
NARAYAN BHIVA KARDILE THROUGH LRS LAHANU NARAYAN
KARDILE AND OTHERS

Mr. Shailesh P. Brahme, Advocate for the Petitioner.

Mr. Akshay Kulkarni h/f. Mr. Amit Yadkikar, Advocate for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATED : FEBRUARY 03, 2023.

PER COURT :

1. Heard.
2. The petitioner is aggrieved by the order dated 17.02.2020 passed by the Trial Court in Regular Civil Suit No.553 of 2015 rejecting the petitioner's application for amendment of plaint. RCS No.553 of 2015 was instituted by the plaintiff seeking relief of partition, possession and injunction.
3. It is the case of the petitioner that the suit property was purchased by his grandfather in the name of his grandmother and it was not the absolute property of the grandmother and as such was susceptible to partition and separate possession.

4. During the cross-examination of the defendant, the document styled as “Wachan-Chithi”, which was shown to the defendant came to be marked as Exh.124 and the contents of the Wachan Chitti were reproduced and an explanation was given by the defendant no.1 in the cross-examination. After the cross-examination of the defendant, an application came to be filed by the petitioner for amendment of the plaint. The application proceeded to seek amendment of the plaint for the purpose of clarifying the evidence of the defendant which had come on record in the cross-examination as regards the contents of the Wachan-Chithi.

5. Learned counsel for the Petitioner submits that during the cross-examination the document was marked as exhibit and as such, the amendment which is sought is necessary for deciding the issue. He would further submit that the Trial Court has rejected the application by observing that the proposed amendment is based on assumptions and presumptions and as such said pleadings cannot be allowed.

6. Per contra, learned counsel for the respondents supports the impugned order.

7. Considered the rival submissions of the parties.

8. During the cross-examination of the defendant no.1, the document which came to be marked as Exh.124 i.e. Wachan Chitthi was a document which was shown by the petitioner to the defendant

no.1 and as such was rightly marked as an exhibit. Although for the purpose of deciding the application for amendment of the plaint it is not necessary to go into merits of the amendment, in the present case, the reason for the proposed amendment is to clarify the position which has emerged from the cross-examination of the defendant no.1, as regards the Wachan Chitthi which cannot be permitted. The proposed amendments being post-trial amendment and the document i.e. Wachan Chitthi being shown to be witness i.e the defendant no.1 makes it obvious that the petitioner was aware of the document and application does not give any reason as to why the matter could have been raised earlier and as such, the limitations prescribed by the proviso to order VI Rule 17 of the Code of Civil Procedure applies.

9. I am not inclined to interfere with the impugned order, for the additional reason that if such a process is permitted to be adopted, in every trial after the cross-examination of the witness, for the purpose of explaining the deposition of the witness, an amendment would be preferred. The reasoning adopted by the trial Court, in my opinion, is not correct, however the application has been rightly rejected by the trial Court.

10. Writ Petition is devoid of merits and is dismissed.

(SHARMILA U. DESHMUKH, J.)