

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

WRIT PETITION NO.8319 OF 2023

**RAMDAS MAHADU JADHAV DIED THROUGH ITS LRS DILIP RAMDAS
JADHAV AND ANOTHER
VERSUS
MR. GANGADHAR MAHADU JADHAV AND OTHERS**

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Advocate for Petitioner : Mr. N.C. Garud

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 14th JULY, 2023

PER COURT :

1. Petitioner is aggrieved by the order dated 23/02/2023, passed by learned District Judge-2, Ahmednagar, below Exhibit-24 in Regular Civil Appeal No.360/2018, thereby allowing application filed by respondent No.1/original plaintiff under Order 6 Rule 17 of the Code of Civil Procedure.
2. Respondent No.1/original plaintiff filed Regular Civil Suit No.170/2014 against petitioner/original defendant for partition and separate possession. The suit was decreed with costs on 01/10/2018. Petitioner/defendant challenged the judgment and decree passed by trial Court by filing Regular Civil Appeal No.360/2018. After hearing of final arguments in the appeal, respondent No.1/plaintiff filed application for mentioning four boundaries of 9 R land described in paragraph No.1B of the plaint.

The said application was opposed by the petitioner/defendant by detail say at Exhibit-26. However, the appellate Court has allowed the application. Hence, the present petition.

3. Heard learned advocate for petitioner. Perused the writ petition memo, annexures thereto and the impugned order.

4. Learned advocate for petitioner assailed the impugned order stating that the said order is passed after hearing final arguments in the appeal and the same is contrary to the proviso under Order 6 Rule 17. He further submitted that there is total lack of due diligence on the part of respondent No.1/plaintiff in filing said application, as the said application is filed after delay of eight years from the date of filing of written statement.

5. Admittedly, the suit is for partition and separate possession. It appears that inadvertently and by bona fide mistake, plaintiff failed to mention the boundaries of 9 R land described in paragraph No.1B of the plaint, which he sought to mention by way of amendment. The appellate Court has rightly allowed the said application Exhibit-24 and permitted the plaintiff to carry out amendment, as the amendment is of technical nature and it does not cause any prejudice to petitioner or other respondents/appellants, also, it does not change the nature of proceedings.

6. Admittedly, petitioner and respondent are real brothers and the suit is for partition. In that view of the matter, appellate Court has rightly allowed the application for amendment. For lack of due diligence appellate Court has awarded cost of Rs.3,000/- to the petitioner.

7. There is no illegality or perversity in the order impugned in present petition. Writ petition being devoid of merits is dismissed.

(NITIN B. SURYAWANSHI, J.)