

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

WRIT PETITION NO.8577 OF 2022

**SMT. BABUBAI PATILBA KANDEKAR
VERSUS
SOMNATH PATILBA KANDEKAR AND OTHERS**

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Advocate for Petitioners : Mr. Amol S. Gandhi
Advocate for Respondent Nos. 1 To 9, 13 To 17, 22 To 24 : Mr.
Shailesh S. Chapalgaonkar
Advocate for Respondent Nos. 18 To 21 : Mr. Shivraj B. Kadu

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 09th AUGUST, 2023

PER COURT :

1. By this petition, petitioner challenges the order dated 02/05/2022, passed by learned Civil Judge, Senior Division, Kopergaon, below Exhibit-144 in Regular Civil Suit No.256/2015, thereby rejecting application filed by petitioner/plaintiff under Order 6 Rule 17 of the Code of Civil Procedure.

2. The suit is filed by petitioner for declaration, partition and permanent injunction, wherein partition deeds dated 10/07/2019, 19/03/1985 and sale deed dated 05/03/1982 are challenged. All the respondents/defendants appeared and opposed the claim of petitioner by filing their respective written statements. Issues were framed and the petitioner has led her evidence. Thereafter, defendant Nos.1 to 3, 5 to 9 and 13 to 17 led their

evidence, which was concluded on 08/04/2022. Further evidence affidavit of defendant Nos.22 to 24 is filed on 08/04/2022 at Exhibit-141 and the suit was posted for cross-examination. At this stage, petitioner has filed application Exhibit-144 claiming that she may be permitted to amend the plaint and challenge sale deed dated 18/10/2011, in respect of land out of Gut No.294, executed in favour of defendant No.24, by defendant No.22A. The said application was opposed by defendants and the trial Court has rejected the same. Hence, the present petition.

3. Heard learned advocate for petitioner, learned advocate for respondent Nos.1 To 9, 13 To 17, 22 To 24 and learned advocate for respondent Nos.18 to 21. Perused the writ petition memo, annexures thereto and the impugned order.

4. Admittedly, for the first time in examination-in-chief defendant No.24 has placed the sale deed dated 18/10/2011 on record claiming that he is *bona fide* purchaser of the suit property on the basis of said sale deed executed in his favour for valuable consideration. The said fact was never pleaded in written statement filed by defendant No.24. Since the suit is filed for partition, declaration and separate possession, the said amendment deserves to be allowed, as the same is subsequent development and it is brought to the notice of petitioner for the first time.

5. Trial Court has adopted hyper technical approach in rejecting application for amendment, ignoring the settled legal position that amendments which help Trial Court to effectively decide dispute between the parties and avoid multiplicity of proceedings are to be liberally allowed. While rejecting application, these principles are ignored by the Trial Court. Hence, the impugned order is unsustainable in law and facts of the present case. In the result following order:-

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 02/05/2022, passed by learned Civil Judge, Senior Division, Kopergaon, below Exhibit-144 in Regular Civil Suit No.256/2015, is quashed and set aside. Application Exhibit-144 is allowed, by keeping the issue of limitation open.
- (III) Amendment in terms of application Exhibit-44 shall be carried out within a period of two weeks from the date of receipt of writ of this order.
- (IV) Respondents/defendants shall be entitled to file their respective additional written statements and then the trial Court shall permit the parties to lead evidence on the amended portion of the plaint.

(NITIN B. SURYAWANSHI, J.)