

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

WRIT PETITION NO. 745 OF 2022

Shivaji Balasaheb Patil (Suryawanshi)
and others .. Petitioners

Versus

Sujata Pradeep Jagtap and others .. Respondents

Shri A. D. Gadekar, Advocate for the Petitioners.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 30TH JANUARY, 2023.**

FINAL ORDER :

. By this petition, the petitioner is aggrieved by the order dated 31st October, 2020, whereby the Trial Court permitted the application for amendment of the plaint filed by the respondent No. 1.

2. R.C.S. No. 241 of 2012 was instituted by the respondent No. 1 against respondent Nos. 2 to 9 seeking partition and separate possession of her 1/3rd share of the suit property and for setting aside the sale deeds executed by the respondent Nos. 2 and 3 in favour of the petitioner.

3. During the pendency of the trial, the respondent No. 2 expired on 10.06.2017 and application came to be moved on 13th February, 2019 by the respondent No. 1 seeking to amend the

plaint for bringing the fact of death of the respondent No. 2 on record and enhancement of her share in the suit property.

4. Heard Mr. Gadekar learned counsel appearing for the petitioner.

5. The learned counsel appearing for the petitioner submits that, the application has been filed after a delay of almost two years and after the evidence of the plaintiff was over. He would further submit that although the respondent No. 1 was appearing in the Trial Court, no application for amendment was made for bringing the subsequent events on record. He would further submit that there is no sufficient explanation tendered for the delay caused in preferring application for amendment.

6. I have considered submissions of the learned counsel for the petitioner.

7. The suit has been filed for partition and separate possession by the respondent No. 1. The suit seeks a declaration as regards 1/3rd share of the respondent No. 1 and also for setting aside the sale deed which has been executed by the respondent No. 2 in favour of the present petitioner. The admitted position is that the respondent No. 1 has sold the suit property to respondent Nos. 8 and 9. The respondent Nos. 8 and 9 have not challenged the order dated 31st October, 2020. Although it is evident that there has been considerable delay and

the amendment is a post trial amendment, in my opinion, considering that the suit is for partition and separate possession and the death of the father of the respondent No. 1 would result in enhancement of the shares of the parties and for proper adjudication of the dispute, the amendment in the plaint is necessary. Considering the above, there is no infirmity in the impugned order of the Trial Court permitting the amendment as in the event the respondent No. 1 succeeds the determination of the share will be natural consequence and for the said purpose subsequent events of death of the father is required to be brought on record.

8. For the reasons above, I am not inclined to interfere in the impugned order dated 31st October, 2020. The writ petition is devoid of merits. Same stands dismissed. No costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23