

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.27 OF 2023**

BHAUSAHEB SUKHDEO KHANDAGALE
VERSUS
KANIFNATH SHRIRANG KHANDAGALE AND OTHERS

...

Mr. Rajendra P. Phatke, Advocate for the Petitioner.

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**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 09th JANUARY, 2023.**

PER COURT:-

1. Heard the learned counsel appearing for the petitioner.

2. The petitioner is aggrieved by the order dated 31.10.2022 passed in RCS No.655/2011, whereby his application for amendment of the plaint came to be rejected.

3. Learned counsel appearing for the petitioner submits that the Trial Court has erred in rejecting the application in as much as the petitioner does not intend to seek any relief against the proposed defendant nos.21 to 43 and neither is the petitioner seeking a share in the proposed properties, which are sought to be included by way of an amendment. As such, he would urge that the amendment is formal in nature and ought to have been allowed even post trial.

4. A few dates are necessary to consider the controversy in issue, which have been reproduced in the impugned order. The suit was filed in the year 2011. On 03.09.2013, upon the petitioner's application defendant nos.5 to 17 were added,

thereafter, on 04.10.2018 additional properties were added and defendant nos.18 to 20 were impleaded. The evidence of the petitioner was closed in the year 2020 and the defendants' evidence was closed on 05.09.2022. Subsequently, defendants filed an application for framing the additional issues, which application came to be allowed vide order dated 07.09.2022 and the additional issues came to be framed casting a burden on the petitioner to prove as to whether he has impleaded all the necessary parties to the suit and also as to whether the petitioner has impleaded all the necessary properties in the suit. Considering the chronology of events, the petitioner had ample opportunity to include all the properties for partition and also implead the necessary parties. It is apparent that only to fill in the lacuna in the evidence and to protect the suit from failure on account of non-joinder of the necessary parties, the application for amendment has been made at the belated stage, at the time when the matter is fixed for final arguments. The provisions of Order VI Rule 17 pertaining to the post trial amendment make it clear that such amendments are to be allowed only if the plaintiff is able to establish that in spite of the due diligence the amendment could not be brought on record earlier. In the present case, the application for amendment filed by the petitioner only states that through inadvertence the said properties could not be included and the necessary parties could not be impleaded. In my opinion, such an explanation does not satisfy the ingredients of Order VI Rule 17 pertaining to post trial amendment.

5. As far as the submission of the learned counsel for petitioner that the amendment is formal in nature as he is not seeking any relief against the proposed defendants or any share in

the proposed properties, in such a case it is open for the petitioner to satisfy the Trial Court as regards the said additional issues which have been framed in the suit. For the said purpose, an amendment in the plaint at the stage of the final arguments cannot be permitted. Learned counsel appearing for the petitioner relied upon the decision of this Court in case of ***Barku Devrao Kachare Vs. Chandrabhaga Vishnu Kachare & ors.; Writ Petition No.802 of 2013*** decided on 26.03.2013. The facts of the said case are clearly distinguishable as in the said case what was sought to be amended was only the description of the property and in the facts of that case this Court held that amendment being formal in nature ought to have been considered by the Trial Court. The said decision does not assist the case of the petitioner.

6. Considering the aforesaid, I am not inclined to interfere with the impugned order. Writ Petition is devoid of merits and is accordingly dismissed.

(SHARMILA U. DESHMUKH)
JUDGE