

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

WRIT PETITION NO. 1031 OF 2020

Ramesh Punja Magar .. Petitioner

Versus

Malanbai Babu Magar and others .. Respondents

Shri Yuvraj V. Kakde, Advocate for the Petitioner.

Shri H. D. Deshmukh, Advocate for the Respondent No. 1.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 30TH JANUARY, 2023.

FINAL ORDER :

. The petition is listed under the caption of urgent orders as respondent Nos. 2, 12 and 19 are not served.

2. Both the parties agree that the respondent No. 1 who is represented by Mr. Deshmukh is the contesting party, being plaintiff in R.C.S. No. 17 of 2011 and the matter has been heard with the consent of the parties.

3. By this petition, the petitioner challenges the order dated 09th September, 2019 passed below Exhibit 136 and 138, rejecting petitioner's applications for amendment of written statement and for recasting of the issues.

4. R.C.S. No. 17 of 2011 was filed by the respondent No.1 seeking partition and separate possession. In the said suit the genealogy has been set out, wherein the ancestors are shown as Maruti Punja Magar, who had three sons and five daughters

namely Punja, Devdhan, Babu, Mardha, Kalabai, Dayabai, Shantabai and Lilabai. The three sons i. e. Punja, Devdhan and Babu have expired and the daughters are the parties to the suit. As far as Punja is concerned, he has three sons and one daughter. However, the respondent No. 1 has impleaded only sons of Punja and daughter is not impleaded as party. As far as the respondent No. 1 is concerned, she is the second wife of Babu and her step sons and four daughters have not been impleaded as party defendants to the suit.

5. The admitted position is that the evidence of the plaintiff and the defendants is almost over. In the cross examination of the plaintiff, an admission is given about existence of the daughters of Punja, who have not been made parties as well as admission that the step sons and the daughters of the respondent No. 1 having not been made party to the proceedings.

6. As such an application came to be filed by the petitioner seeking amendment of the written statement for bringing the said facts on record and consequently raising a defence of non joinder of necessary parties. By the impugned order dated 09th September, 2019, the application filed under Order VI Rule 17 of the Code of Civil Procedure came to be dismissed as the Trial Court observed that the suit is at post trial stage and even at a later stage if the party wants to introduce facts in respect of subsequent development, if it would be necessary for final adjudication and to avoid multiplicity of proceedings. The Trial Court was of the opinion that the proposed amendment is not justifiable and as it is post trial amendment and if the permission is granted to the petitioner to amend the written

statement, it would cause unreasonable hardship to the plaintiff.

7. Application under Exhibit 138 seeking recasting of the issues that the suit is bad for non joinder of necessary party also came to be rejected.

8. Considered the rival submissions of the parties.

9. The suit is for partition, as such it is necessary that all the stake holders are made party to the suit in order to avoid any subsequent reopening of the issues. A decree for partition will determine shares of the parties and if subsequently it is found out that all the stake holders were not before the Trial Court, it will result in re-determination of shares, which would cause undue hardship to all the parties. It is true that the present case is case of post trial amendment and it is also necessary to keep in mind the fact that the petitioner is family member and must be well aware of the necessary parties and the petitioner has chosen to remain silent till the evidence of the parties is over. As such this application at a belated stage has resulted in undue hardship to the parties to the suit. However, at the same time it needs to be considered that all the parties are required to be brought before the Trial Court for final adjudication of the issue and for final determination of the shares of the parties.

10. In my opinion, in the interest of justice, the applications are required to be allowed subject to payment of cost of Rs. 10,000/- (Rs. Ten thousands only) to be paid to the respondent No. 1 within a period of four (04) weeks from today.

11. In view of the belated submissions which have been raised by the petitioner after the evidence of the parties is almost over, in my view, interest of justice will be served if the respondent No. 1/plaintiff is permitted to amend the plaint to add all the parties to the plaint, which amendment is to be carried out on the next date of hearing before the Trial Court. As far as recasting of the issues is concerned, the Trial Court to consider the said application in view of the subsequent amendment of the plaint, on its own merits.

12. Writ Petition stands allowed in the above terms.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23