

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2375 OF 2018

Rupali Sandeep Kadam & Anr.Petitioners
Versus
Abhijit Shivajirao Londhe & Ors. Respondents

Mr. Naveen B. Khaire, Advocate for the Petitioners.

Ms. Swatantri Waghmare, Advocate for the Respondent
No.3-Bank.

CORAM : SARANG V. KOTWAL, J.

DATE : 6th MARCH, 2023

P.C. :

1. In this Petition, the petitioners have challenged the order dated 13.1.2017 passed by the Civil Judge, Senior Division, Gadhinglaj below Exhibit-104 in Special Civil Suit No.14/2012 thereby dismissing the application preferred by the petitioners for amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure.

2. Heard Shri Naveen Khaire, learned counsel for

the petitioners and Ms. Swatantri Waghmare, learned counsel for the respondent No.3-Bank.

3. The suit was originally filed by Shivajirao Londhe and the petitioner No.2 herein Vijayalaxmi Londhe. The petitioner No.1 is their daughter. The respondent Nos.1 & 2 are the original defendants and they are the sons of the original plaintiffs Shivajirao and Vijayalaxmi.

4. The original suit was filed for permanent injunction against the respondent Nos.1 & 2 from disturbing the peaceful possession of House No.142, City Survey No.1565, in the limits of Gadhinglaj Municipal Council. During pendency of the suit, the original plaintiff No.1 passed away. By the earlier order passed by the trial Court, the petitioner No.1 was allowed to be brought on record as the plaintiff No.1. After that, an application was preferred for amending the plaint. That particular amendment application was rejected by the impugned order.

5. I have heard the parties. Nobody appears for the

respondent Nos.1 & 2 though served. Ms. Waghmare appears for the respondent No.3-Bank. Learned counsel for the petitioners submitted that issue of possession of the suit property is important and since the petitioner No.1 is in possession of the house, the amendment of the plaint mentioning that particular fact is necessary. That particular amendment does not change the nature of the suit.

6. I have considered these submissions and I have perused the original plaint and the proposed amendment. In the plaint, the averments in respect of that house property are mentioned how the original plaintiff No.1 Shivajirao had acquired that particular property in the year 1981. After that he obtained loan from the respondent No.3 and constructed a new house. According to the averments in the plaint, the plaintiff No.1 was the sole and exclusive owner of that particular house. He had suffered from paralysis and by way of family arrangement, he had permitted name of the petitioner No.2 to be entered in the revenue records of the agricultural lands which was mentioned at Sr.No.1A of the

schedule to the plaint. However, as far as the house is concerned, the averment in the plaint was that the original plaintiff No.1 Shivajirao was the owner of the house.

7. After the petitioner No.1 was brought on record as the plaintiff No.1, the proposed amendments were made in which entirely different statements were made. It was mentioned that the petitioner No.2 had acquired the agricultural land at Sr.No.1A and even the house at Sr. No.1E referred to hereinabove was her own self-acquired property. This stand is totally contrary to the averments in the plaint. Besides that, there is reference to various grounds which are not part of the plaint. Thus, it can be seen that the entire complexion of the suit was sought to be changed by the proposed amendment; and totally contrary stand was taken in the proposed amendment. The impugned order records the contention of the respondent Nos.2 & 3.

8. The learned Judge has recorded that when the title of the house itself was in dispute in view of the contention of the respondent Nos.1 & 2, the request of the

plaintiff No.1 i.e. the petitioner No.1 to amend the plaint will change the nature of the suit in respect of the said house. I agree with the observation made by learned trial Judge and I do not find merit in this writ petition. The petition is accordingly dismissed.

(SARANG V. KOTWAL, J.)

Deshmane (PS)