

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2061 OF 2023

Rahibai Murhari Bhosale & Ors.

...Petitioners.

Versus

Ashok Namdeo Bhosale & Ors.

..Respondents.

Mr. Dilip Bodake for the petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : July 26, 2023.

P. C. :

1. The petition challenges the order dated 4th August 2022 partly allowing the application below exhibit 29. By the said order the petitioner who is the original plaintiff was permitted to bring on record the legal heirs of deceased defendant no.5 however the additional prayer made for the amendment of plaint for the purpose of producing the sketch of the suit property and to annex the Gat map prepared by the TILR Madha came to be rejected.

2. Upon perusal of the application seeking the amendment below exhibit 29, it is evident that there is no reason which is stated by the petitioner for the purpose of producing the rough hand sketch map as

well as the Gat map prepared by the TILR Madha. The entire application proceeds to place on record the fact of the death of defendant no.5 and the reason for bringing the legal heirs of deceased defendant no.5 on record. In this application which appears to be an application for bringing the legal heirs on record under order 22 rule 5 of CPC few sentences were inserted seeking the relief for producing the sketch map and the Gat map. There is no reason as to why no separate application for seeking amendment of plaint was filed. Considering that the application seeking the proposed amendment for the purpose of introducing the maps does not state any reason as to why the said maps are necessary for the effective adjudication of controversy in dispute, the trial court has rightly rejected the prayer in that regard.

3. However, considering that the suit in question is for partition and separate possession and to comply with the provisions of order 7 rule 3 of the CPC it will be necessary for the petitioner plaintiff to produce the map in question, in my opinion, the petitioner can be permitted to file an application for amendment of plaint afresh giving all details as to why the proposed amendment is necessary for the effective adjudication of dispute.

4. In the interest of justice the impugned order to the extent of rejecting the petitioner's prayer for amendment is quashed and set aside. Let the fresh application be filed by the petitioner seeking amendment of plaint under order 6 rule 17 of the CPC. If such an application is filed, the trial Court to consider the same on its own merits and in accordance with law.
5. Writ petition stands disposed of.

[Sharmila U. Deshmukh, J.]