

Nikita

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

WRIT PETITION NO.6236 OF 2022

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KAILAS
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Jagganath Kanu Gophane Since Decd by
his Legal heirs Thr. Its Attorney ... Petitioner

V/s.

Baban Vithoba Gophane and Ors. ... Respondents

Mr. Hemant Ghadigaonkar for the Petitioner.

Mr. Anil V. Anturkar Sr. Adv. i/b Mr. Bhushan Raut, for
Respondent Nos. 4 to 7.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 13, 2023

P.C.:

1. The petitioner is original plaintiff who filed suit for a declaration that sale deed executed by defendants inter se to be declared as null and void and for possession of suit property based on title. Initially, the suit is based on the averment that the suit properties are ancestral properties and one Kanu Gophane was owner of the suit property. According to plaintiff, defendant No.1 to 4 have no right to execute sale deed.

2. In the said suit before commencement of trial, plaintiff filed an application to delete paragraph No.2 which contained an averment that the suit property is ancestral property and suit property was owned by Kanu Gophane. By proposed amendment, petitioner intends to plead that one Rahibai Chavan, the owner of

the property and the petitioner succeeded her.

3. The Trial Court rejected the application on the ground that the proposed amendment would embarrass the defence of defendant. The Trial Court also held that the explanation furnished by the plaintiff that since the plaintiff was illiterate and, he was not knowing about the consequences of the word “ancestral” is not acceptable.

4. Since, the application for amendment is filed before the commencement of Trial, proviso to Order 6 Rule 17 of CPC is not attracted. On perusal of the amendment, the petitioner is not introducing inconsistent case but the petitioner intend to replace averment relating to property being ancestral by averment that the petitioner received the properties by inheritance. Such amendment before commencement of trial is permissible. The Trial Court was, therefore, not justified in rejecting the application for amendment. Hence following order:

a) The order impugned dated 28th September 2021 passed by 10th Joint Civil Judge Senior Division Pune, in Special Civil Suit No.1744 of 2018 below Exhibit-51 is quashed and set aside.

B Application below Exhibit-51 in Special Civil Suit No.1744 of 2018 is allowed.

5. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)