

Anand

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

WRIT PETITION NO. 4475 OF 2014

**ANAND
SUDHAKAR
SUDAME**

Ahmed Fazluddin Aadhal & anr.

.Petitioners

Vs.

Ibrahim A. Karim Aadhal & ors.

.Respondents

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SUDAME
Date: 2023.08.04
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Mr. Nachiket V. Khaladkar, Advocate, for the Petitioners

Mr. Anilkumar K. Patil, Advocate, for the Respondents

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 28.07.2023

P. C.

. The challenge in the Petition is to the order dated 07.01.2014 rejecting the Petitioners' application for amendment in the plaint.

2. R. C. S. No. 34 of 2011 was filed by the Petitioners seeking partition and separate possession of the share in the suit properties which are described in paragraph 2 of the plaint. An application for amendment below Exh. 48 came to be filed on 21.09.2013 seeking amendment of the plaint which came to be rejected by the impugned order dated 07.01.2014 on the ground that the Petitioner is now claiming a share in respect of the suit properties which had been given up at the time of institution of

the suit and that the proposed amendment changes the nature of the suit and the same is post trial amendment.

3. Heard learned counsel for the Petitioners and the learned counsel for the Respondents.

4. Learned counsel appearing for the Petitioners submits that by the proposed amendment, the Petitioners sought to incorporate a detailed family tree and the list of the properties which were already sold. He would contend that in the plaint, there was a specific pleading that apart from the suit properties, there were other properties which have been sold by the Defendants which have not been included as the suit properties. He would submit that the Petitioners seek to give the list of the suit properties which are already sold and does not claim any share in the said properties which are sold. He would specifically emphasize that the Petitioner is claiming partition and possession of share only in the suit properties which is mentioned in paragraph 2 of the plaint. He would further contend that the pleadings as regards the mutation entries indicate that the other family members have got the share and that as the Petitioner's father was a minor at that point of time,

he was not given his share and as such, seeks enhanced share. He would assail the order of the trial Court by contending that the trial Court has factually erred in rejecting the application on the ground that the Petitioner is seeking a share in the suit property which are sold. He would further submit that the proposed amendment does not change the nature of the suit and will remain a suit for partition.

5. Per contra, learned counsel appearing for the Respondents supports the impugned order. He would further contend that the issues were framed in the matter and the affidavit of evidence which was filed was withdrawn and subsequently, the application for amendment was filed. He would further contend that the Petitioner is by the proposed amendment seeking to claim a share in the suit property which is already sold.

6. Considered the submissions.

7. By the proposed amendment, the Petitioners are seeking to give a detailed family tree and the list of the suit properties which have already been sold. The factual foundation

as regards the properties being already sold has already laid in paragraph 3 of the plaint. The apprehension of the Respondents is that by the proposed amendment, the Petitioner is now seeking to claim a right in those properties which is already sold is taken care of by the specific submissions of the learned counsel for the Petitioners that only the list of properties, which are sold, is sought to be incorporated by way of the proposed amendment and that the Petitioner is not claiming any right in the properties already sold and the suit properties will remain the properties which are described in paragraph 2 of the plaint. The suit in question is filed for partition and separate possession and the proposed amendment do not change the nature of the suit as only the details of the family tree as well as the pleadings as regards the shares which have been taken by the other family members are sought to be incorporated.

8. In that view of the matter, the impugned order dated 07.01.2014 is unsustainable and is hereby quashed and set aside. As a consequence, application for amendment dated 21.09.2013 filed below Exh. 48 stands allowed.

9. The Writ Petition stands disposed of in the aforesaid

terms.

10. Needless to clarify that after amendment is carried out, the Respondents would be entitled to file the additional written statement.

(SHARMILA U. DESHMUKH, J.)