



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

35 WRIT PETITION NO. 2802 OF 2019

JAGANNATH NARAYAN BHUTKAR
VERSUS
NARAYAN HARIBHAU BHUTKAR AND OTHERS

Mr. Z. M. Pathan, Advocate for the petitioner
Mr. A. P. Bhandari, Advocate for respondent no.3.

CORAM : R. M. JOSHI, J.

DATE : 18th NOVEMBER, 2024

PER COURT :-

1. Heard.
2. The petitioner is original plaintiff being aggrieved by the order passed below Exhibit 142 in R.C.S. No. 405/2001 whereby the application filed by defendant nos. 3, 7 and 8 for amendment of Writ Petition under Rule VI Rule 17 of the Code of Civil Procedure (for short 'CPC') came to be allowed.
3. The petitioner has filed suit for seeking partition of the suit property against the defendants. It is his claim that the suit properties are ancestral joint family properties and that there is no previous partition of the same. With these pleadings petitioner seeks partition and separate share in the suit properties.

4. Defendant nos. 3, 7 and 8 appeared and filed written statement taking specific plea about the suit property being partition prior to the filing of the suit property of the plaintiff. The suit proceeded further. Plaintiff has examined himself and other witnesses are yet to be examined. At this stage application Exhibit 142 came to be filed under Order VI Rule 17 of CPC seeking amendment to the written statement. This application is allowed. Hence, this petition.

5. Learned counsel for the petitioner submits that the amendment sought to the written statement is belated and without any reason/justification for not carrying out the same before commencement of trial. It is his further submission that permitting the amendment in respect of changing the word "West to North" will change the nature of suit property. It is his submission that the evidence of plaintiff is over and cross-examined by the defendants. In such circumstances there was no justification for permitting the amendment to the written statement.

6. Learned counsel for the contesting respondent supported the impugned order.

7. There cannot be any dispute made with regard to the fact that it is just and necessary for the defendant to provide reason for not amending the pleadings before commencement of trial in view of

provisions of Order VI Rule 17 of CPC. Perusal of application Exhibit 142 indicates that the clause no. B sought to be amended is pursuant to the subsequent event occurred after filing of the written statement. Thus, there would not be any impediment in permitting the same as the same is found to be relevant for the decision of the case.

8. In so far as the amendment as stated in clause no. A is concerned, the defendant is seeking to be placed the word "North from West". Though it is sought to be argued by the learned counsel for the petitioner that this amendment would change the nature of the suit property and the respective possession of the parties over the same, it is pertinent to note that the suit is for partition. Petitioner / Plaintiff has come out with a specific case that there is no partition of the suit property and hence he is seeking partition and separate possession thereof. As against this the contesting respondents have pleaded specific case of previous partition. In such circumstances, if the plaintiff fails to substantiate his case, the result of the suit could be dismissal of the same. As against this if the petitioner plaintiff succeeds in proving that there is no previous partition and that the suit properties are the joint family properties, the written statement of these defendants is of no consequence. Hence, there is no merit in the petition.

9. Learned counsel for the petitioner submits that in view of amendment the plaintiff be permitted to lead additional evidence if necessary. Needless to say that after amendment is allowed it is open for the other side to lead evidence if required. Hence, with this liberty, petition stands dismissed.

(R. M. JOSHI, J.)

ssp