



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

960 WRIT PETITION NO. 944 OF 2022

- 1] Vinayak s/o. Pandurang Jaybhaye,
Age 64 years, Occu : Agril. & Pensioner,
R/o. Hipparga (Sha) Tq.Kandhar,
Dist. Nanded.
At present residing at
Jijamata Colony, Plot No.07, New CIDCO,
Nanded, Tq. & Dist. Nanded.
- 2] Sulochanabai w/o. Vinayak Jaybhaye,
Age 60 years, Occu : Agril & Household,
R/o. Hipparga (Sha) Tq.Kandhar,
Dist. Nanded.
At present residing at
Jijamata Colony, Plot No.07, New CIDCO,
Nanded, Tq. & Dist. Nanded.

.. PETITIONERS

[Orig.Deft.Nos.1 & 2]

VERSUS

- 1] Sandeepkumar s/o. Vinayak Jaybhaye,
Age : 36 years, Occu : Agril. & Service,
R/o. Hipparga (Sha) Tq.Kandhar,
Dist. Nanded.
At present residing at
S.T.C. Border Security Force Camp,
Chakur, Dist. Latur – 413513.
- 2] Dilipkumar s/o. Vinayak Jaybhaye,
Age: 41 years, Occu : Agril. & Service
[Assistant Teacher],
R/o. Hipparga (Sha) Tq.Kandhar,
Dist. Nanded.
At present residing at
Chatrapatinagar, Behind Pawade Managal
Karyalaya, Nanded, Tq. & Dist. Nanded.

- 3] Vishnukant s/o. Vinayak Jaybhaye,
Age: 31 years, Occu : Agril. & Service,
R/o. Hipparga (Sha) Tq.Kandhar,
Dist. Nanded.
At present residing at
Jijamata Colony, Plot No.07, New CIDCO,
Nanded, Tq. & Dist. Nanded.
- 4] Bhaskar s/o. Vinayak Jaybhaye,
Age: 27 years, Occu : Agril. & Service,
R/o. Hipparga (Sha) Tq.Kandhar,
Dist. Nanded.
At present residing at
Jijamata Colony, Plot No.07, New CIDCO,
Nanded, Tq. & Dist. Nanded.

.. RESPONDENTS

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Mr.S.V.Kurundkar, Advocate for the petitioners
Mr.S.A.Nagarsoge, Advocate for respondent nos.1, 3 and 4.
Mr.H.I.Pathan, Advocate for respondent no.2.

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CORAM : ARUN R. PEDNEKER, J.

DATE : 23.04.2024

P.C. :

1] By way of present writ petition, the petitioners are challenging the order dated 18.09.2021 passed by the Civil Judge Junior Division, Kandhar below Exh.64 in Regular Civil Suit No.89/2017.

Brief facts leading to filing the present writ petition can be summarized as under :

2] The respondent no.1 – plaintiff filed Regular Civil Suit No.89/2017 for partition and separate possession against his father - defendant no.1 and his mother - defendant no. 2. The petitioners – defendant nos. 1 and 2 filed written statement whereby they submitted that the entire properties as stated in the plaint are joint family properties of the family whereas defendant no.3 filed separate written statement in which he contended that Gat No.494 is exclusively owned by him. It is stated in the written statement filed by defendant no.3 that defendant no. 3 is the son of first wife of defendant no.1. The petitioners – defendant nos. 1 and 2, thereafter, filed an application below Exh.64 for amendment of the written statement, contending therein that, Gat Nos.494 and 148 are the self acquired properties of defendant no.1. The said application is resisted by the defendant no. 3. The plaintiff filed say on application at Exh.64 and submitted that the application be allowed subject to heavy cost.

3] The trial Court on consideration of the material

observed that the petitioners – defendant nos. 1 and 2 filed written statement and that they have admitted that the suit properties mentioned in land Gat Nos.494 and 148 are joint family properties whereas by way of amendment, the defendant nos. 1 and 2 submits that Gat Nos.494 and 148 are self acquired properties of the defendant no.1 and that the admissions made by defendant nos. 1 and 2 in original written statement is sought to be withdrawn by defendants by the proposed amendment. As such, the application for amendment of the written statement is dismissed by the trial Court. Against the same, the present writ petition is filed.

4] The learned counsel for the petitioners contends that amendment to the written statement is to be treated on a different footing from the prayer of amendment of plaint and the Courts are more liberal in allowing amendment of a written statement. The learned counsel for the petitioners relies upon the judgment in the case of **Usha Balasaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors.** reported in

2007 ALL SCR 1333 more particularly at para nos.19 and 20 and also on the case of **Baldev Singh and Ors Vs. Manohar Singh and Anr.** reported in **AIR 2006 SC 2832** [para no.16]. Relying upon the aforesaid judgments, the learned counsel for the petitioners contends that in the case of amendment of written statement the courts are more liberal in allowing amendment of a written statement. He also submits that addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement should not be objectionable as in case of amendment to a plaint while adding, altering or substituting a new cause of action in the plaint. He further submits that properties in Gat Nos.494 and 148 are self acquired properties and as such pleadings ought to have allowed.

5] *Per contra*, the learned counsel for the respondent – defendant no.3 relies upon the judgment in the case of **Heeralala Vs. Kalyan Mal and others** reported in **[1998] 1 SCC 278** at para nos. 9 and 10 and contends that

written statement should not be allowed to be amended to such an extent that the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants.

6] Having considered the rival submissions of the parties. There can be no dispute with the legal proposition so canvassed by the learned counsel for the petitioners that the amendment to written statement has to be liberally considered as has been held in the case of **Usha Balasaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors.** reported in **2007 ALL SCR 1333**. In the case of **Usha Balasaheb Swami** [supra] at para nos.19 and 20 held as under :

19. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent

pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

20. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case [see *B.K. Narayana Pillai Vs. Parameswaran Pillai* (2000 (1) SCC 712) and *Baldev Singh & Ors. Vs. Manohar Singh* (2006 (6) SCC 498) : (2006(5) ALL MR (S.C.) 107]]. Even the decision relied on by the plaintiff in *Modi Spinning* (*supra*) clearly recognises that inconsistent pleas can be taken in the pleadings. In this context, we may also refer to the decision of this Court in *Basavan Jaggu Dhobi Vs. Sukhnandan Ramdas Chaudhary (Dead)* [1995 Supp (3) SCC 179]. In that case, the defendant had initially taken up the stand that he was a joint tenant along with others. Subsequently, he submitted that he was a licensee for monetary consideration who was deemed to be a tenant as per the provisions of Section 15-A of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947. This Court held that the defendant could have validly taken such an inconsistent defence. While allowing the amendment of the written statement, this Court observed in *Basavan Jaggu Dhobi's case* (*supra*) as follows :-

"As regards the first contention, we are afraid that the courts below have gone wrong in holding that it is not open to the defendant to amend his statement under Order 6, Rule 17, CPC by taking a contrary stand than was stated originally in the written statement. This is opposed to the settled law open to a defendant to take even contrary stands or contradictory stands, the cause of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action."

7] Considering the above judgment, addition of a new ground of defence or substituting or alternating a defence or taking inconsistent pleas in the written statement would not be objectionable as it may be while adding, altering or substituting a new cause of action in the plaint may be objectionable.

8] However, the admissions are made by the defendant nos. 1 and 2 in the written statement that, the land in Gat Nos.494 and 148 are their joint family properties whereas in the amended written statement, the defendant nos. 1 and 2 stated that the land in Gat Nos. 494 and 148 are self acquired properties of defendant no.1.

9] In the case of **Usha Balasaheb Swami [supra]**, the Hon'ble Supreme Court has held that the defendant is entitled to take new defence. However, it is also observed that application for amendment to written statement, the admissions made cannot be withdrawn. In the case of ***Heeralala Vs. Kalyan Mal and others*** reported in **[1998] 1 SCC 278 [supra]** wherein the Hon'ble Supreme Court at para no.9 has observed as under :

9. However the aforesaid decision of the three-member Bench of this Court in Modi Spg. is to the effect that while granting such amendments to written statement no inconsistent or alternative place can be allowed which would displace the plaintiff's case and cause him irretrievable prejudice.

In the instant case, the admissions of the defendant nos. 1 and 2 in the written statement that land in Gat Nos. 494 and 148 are their joint family properties whereas in the amended written statement, the defendant nos. 1 and 2 stated that the land in Gat Nos. 494 and 148 are self acquired properties of defendant no.1. The admissions made cannot be allowed to be withdrawn.

Although the admission made by defendant no.4 and defendant no. 2 if withdrawn substantially effects the defendant no.3, the same is not permitted to be withdrawn as the suit is a partition suit and the defendants also can be treated as plaintiff. Hence the present writ petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE

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