



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11178 OF 2022

RAJENDRA HARI DESHMUKH

VERSUS

PARMILA MURLIDHAR KULKARNI DECEASED THROUGH LRS MURLIDHAR
GOVIND KULKARNI AND OTHERS

Mr. S. S. Kulkarni, Advocate for the petitioner

Mr. D. R. Jaybhar, Advocate for respondent Nos. 1B to 1F and 2 to 4.

CORAM : R. M. JOSHI, J.

DATE : 8th JULY, 2024

PER COURT :-

1. The original defendant who have filed counter claim in RCS No. 583/2014 has sought amendment under Order 6 Rule 17 of the Code of Civil Procedure (for short 'CPC') vide application (Exhibit) 272. Since the said application is rejected by the learned Trial court, this petition.

2. Petitioner/original defendant has filed application seeking amendment for the written statement and counter claim to incorporate the change in the position of law *vis-a-vis* the fact there was already creation of third party interest in the suit property prior to year 2005. This application is rejects by the learned Trial Court for the reason that that the amendment sought is pure question of law and as such there is no need to incorporate the same in the pleadings.

3. Learned counsel for the petitioner has sought to challenge the said order with the submission that since there was change in the position of law with regard to the women being coparcener or not in the ancestral property, the fact with regard to the ownership of the defendant in the entire property and creation of third party interest prior to year 2005 i.e. amendment to Section 6 of the Hindu Succession Act ought to have been allowed to be incorporated in the pleadings by the learned Trial Court. This order is supported by the learned counsel for the respondents.

4. Perusal of the application (Exhibit 272) indicates that no new/ independent facts are sought to be brought on record, however, it is in form of arguments, that having regard to the factum of death of Ramchandra prior to the birth of plaintiff No.1, she does not become a coparcener of the property and sale thereof prior to 2005, hence the amendment is sought. Pleadings are narration of fact and law is not required to be pleaded. Therefore, in considered view of this Court, learned Trial Court has rightly taken into consideration the written statement/counter claim and the pleadings made therein and observed in paragraph No. 9 that the amendment sought to be incorporated is nothing but the question of law sought to be argued which need not be pleaded.

5. Having regard to the facts of the case and the finding recorded by the Trial Court no perversity is found therein. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp