



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

975 WRIT PETITION NO.13870 OF 2023

**HADIMIYA MURTUZA SAYYAD DECEASED THROUGH
LRS SAYYAD JUBEDA HADIMIYA & ANOTHER
VERSUS
STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for the petitioners : Mr.L.V.Sangit
AGP for Respondent-State : Adv.K.R.Jamdhade
Advocate for Respondent no. 5 : Mr.B.N.Magar
...

CORAM : ARUN R. PEDNEKER, J.

DATE : 13.08.2024

P.C. :

1] Heard the learned counsel for the petitioners.

2] The petitioners filed an application seeking amendment in the plaint. By order dated 01.08.2023, said application is rejected by the Civil Judge Senior Division, Shrirampur, holding that the evidence of the plaintiff is already over and the matter is fixed for evidence of the defendant no.5. It is also clear from the record that the plaintiff had already availed opportunities for amendment

of the plaint during pendency of the suit. By way of amendment, the plaintiff is trying to incorporate the property bearing Gat No.12/6 as the suit property, with contention that the deceased Bisabi had willed the said property in favour of defendant no.5 in an illegal manner. The said will is executed on 30.11.1990 and Bisabi died on 04.02.1995. The trial Court held that the existence of will and the properties included in the said will are well within the knowledge of plaintiff. The Court further held that since he has challenged the execution of said will, it is but natural that he is aware about the properties included thereof. The plaintiff's contention that the said property remained to be included in the suit "inadvertently" cannot be a ground to permit him to amend the pleadings after commencement of trial and more particularly after conclusion of his evidence. Accordingly, the Application for amendment is rejected.

3] The plaintiffs in the Civil Suit has challenged the will deed executed by deceased Bisabee in favour of respondent no.5 and the petitioners/plaintiffs are the legal heirs of the deceased Hadimiya Murtuza Sayyad. The petitioners are

claiming inheritance of the property of the deceased and the inheritance right of the petitioners would depend upon the validity of the will. In the event, the will is held to be valid, the respondent no.5 would be entitled for the properties mentioned in the will subject to other legal requirements and in the event, the will is invalidated, the legal heirs of the deceased will be entitled to the properties of the deceased. In view of the same, irrespective of the properties mentioned in the suit, all the properties of the deceased would be available for succession in the event the plaintiff succeed in getting declaration of the will as null and void. In view of the same, the present Writ Petition is not entertained and disposed of.

4] The learned counsel for the respondent no.5 submits that the properties have been disposed of in the lifetime of the deceased Bisabi and that the property sought to be incorporated do not form the part of the properties of the deceased. The reply filed by the respondent no. 5 is taken on record. The respondents can raise all contentions before the trial Court.

5] The trial Court is requested to decide the pending suit as early as possible and the parties to cooperate with the trial Court in deciding the suit expeditiously.

[ARUN R. PEDNEKER]
JUDGE

DDC