



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 WRIT PETITION NO. 3096 OF 2018
WITH CIVIL APPLICATION NO. 12482 OF 2024
IN WP/3096/2018

KALYANRAO TYAMBAKRAO PATIL AND OTHERS
VERSUS
BAPURAO TYAMBAKRAO PATIL AND OTHERS

Mr. C. D. Biradar, Advocate for the petitioners
Mr. R. B. Deshmukh, Advocate for respondent no.1.

CORAM : R. M. JOSHI, J.
DATE : 22nd NOVEMBER, 2024

PER COURT :-

1. This petition takes exception to order passed below Exhibit 98 filed by the petitioners/original defendants in R.C.S. No. 420/2014 under Order VI Rule 17 of the Code of Civil Procedure of amendment to the written statement.

2. The respondents filed suit for partition of the joint family properties. The petitioners filed written statement. After the trial commenced, the application (Exhibit 98) came to be moved for amendment to the written statement by contending that the some properties are excluded from partition and therefore, the defendants sought inclusion of the properties in the common hotchpot.

3. Learned Trial Court rejected the application only on the ground that while filing the written statement these averments were not made.

4. There cannot be dispute about the fact that it was necessary for the defendants to incorporate his pleadings at the time of filing of the written statement. However, having regard to the nature of the suit i.e. suit for partition, unless all the properties belonging to joint family are included, the suit itself can not be held to maintainable. In suit for partition, both sides are treated as plaintiffs since they have same interest in the subject matter of the suit. Thus, in the interest of the parties that the written statement deserves to be permitted to be amended. No prejudice will cause to the plaintiff as it is open for him to lead evidence to show that these properties are not joint family properties etc.

5. Thus, this is a fit case for setting aside the impugned order. Accordingly, petitioner is allowed. Impugned order dated 29/09/2017 passed below Exhibit 98 is set aside. Exhibit 98 stands allowed. Amendment to be carried out within a period of four weeks from today. Needless to say that parties are at liberty to additional evidence on the basis of amended pleadings. Though, the petition deserves to be allowed, in view of a fact the application is moved at belated stage, cost

of Rs.5000/- is imposed. Petitioner to pay the said cost to the respondents.

6. Learned counsel for the respondents seeks expeditious disposal of the suit. Learned counsel for the petitioners records no objection for the same.

7. Since, the suit pending for last more than 10 years, the Trial Court is directed to decide the suit expeditiously and in any case within a period of a year.

8. Pending application, if any, stands disposed of.

(R. M. JOSHI, J.)

ssp