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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4452 OF 2022

Vijay Yedu Kharat

.. Petitioner

Versus

Pravin Yedu Kharat and Ors.

.. Respondents

-
- Mr. Rajaram V. Bansode a/w. Ms. Sheetal M. Ubale, Advocate for Petitioner.
 - Mr. Rakesh K. Agrawal, Advocate for Respondent Nos.7 to 9.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 26, 2024.

P.C.:

1. Heard Mr. Bansode, learned Advocate for Petitioner and Mr. Agrawal, learned Advocate for Respondent Nos.7 to 9.

2. The order impugned in the present Writ Petition is dated 03.12.2021 passed by the learned Trial Court in an interlocutory Application filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short “CPC”) by the Plaintiff seeking amendment to the Suit plaint.

3. Regular Civil Suit No.99 of 2009 was filed for partition of 14 properties as originally stated in the Suit plaint. There are 9 Defendants. Defendant Nos.7 to 9 contested and brought to the notice of the learned Trial Court in their written statement that 2 additional properties, namely 1 house property and one land property ought to be

included into the pool of the Suit properties for effecting partition. Both these properties are ancestral properties. Despite the said information being placed on record by Defendant Nos.7 to 9 in their written statement, the Suit proceedings proceeded until the culmination of the Plaintiffs' witness action in its entirety. It is only thereafter that Plaintiffs filed Application below Exhibit "60" which is at Exhibit "E" - page No.25 of the Writ Petition seeking to include the aforementioned 2 properties, namely 1 house property described in paragraph No.1 of the Application and 1 land property described in paragraph No.2 of the Application for including the same in the pool of the Suit properties for partition.

4. Mr. Bansode for the Plaintiff agrees that inclusion of the aforesaid 2 properties would enure to the benefit and interest of all parties to the Suit proceedings.

5. *PER CONTRA*, Mr. Agrawal, learned Advocate has opined and suggested that the Application seeking such inclusion is filed as late as on 29.09.2018 and only after Plaintiffs' entire witness action has been completed. Plaintiffs have not shown any due diligence whatsoever. Mr. Agrawal is right in his contention since the learned Trial Court has also recorded the fact that despite the Plaintiffs' witness action having been completed on 13.11.2017, the said Application was not preferred till that date.

6. Mr. Bansode however would submit that in so far as the inclusion of these 2 properties is concerned, the Plaintiff makes a statement that he shall lead any evidence whatsoever and hence there can be no impediment in including these 2 properties in the pool of the Suit properties for effecting partition of all ancestral properties in the Suit plaint.

7. The impugned order however rejects the Application for inclusion of these 2 properties and directs the Plaintiff to pay costs to the Government for belatedly filing this Application. The order is passed on the sole premise that the Application is baseless and frivolous and filed at a very belated stage and Plaintiff cannot be allowed to amend the Suit plaint at any stage after commencement of the trial and subsequent to commencement of the trial.

8. Be that as it may, it needs to be understood that in a Suit for partition, the Plaintiff or the Defendants, namely all parties are appearing for distribution of the properties and as Plaintiffs and therefore inclusion of any further properties shall be of benefit to the parties and hence the Suit properties cannot be ousted and shut out even though the Application may be made at a very late stage in the Trial Court. One of the reasons to allow such an Application for inclusion is to avoid multifarious proceedings and litigations between the same parties. No harm will be caused by including the subject two

properties in the pool of properties. In fact, at one point of time, it is the Defendant Nos.7 to 9 who had pointed out these very properties for being included as Suit properties. Suit is pending for effecting partition. Hence in the interest of justice and in the interest of rights of the Plaintiffs as well as all Defendants, the impugned order dated 03.12.2021 is quashed and set aside. Resultantly Application filed under Order VI Rule 17 of the CPC stands allowed and it is directed that the aforesaid 2 properties which are described in paragraph No.1 and paragraph No.2 of the Application dated 29.09.2018 shall be included in the list of the properties for which the partition Suit has been filed.

9. It is clarified that, Plaintiffs shall not lead any witness action whatsoever before the learned Trial Court as admitted before this Court and that the Plaintiffs' witness action stands closed.

10. Defendants shall lead evidence in rebuttal, if they so desire now. Learned Trial Court is directed to dispose of the partition Suit as expeditiously as possible and in any event within a period of six months from today.

11. Needless to state that right of all Defendants to file any additional written statement after the amendment to the Suit plaint is carried out is expressly kept open.

12. Learned Trial Court shall permit the Plaintiffs to carry out the amendment to include the 2 Suit properties in the Suit plaint within a period of one week from today. Copy of amended Suit plaint shall be served on all Defendants by the Advocate for the Plaintiff before the Trial Court within one week from today.

13. It is clarified that the learned Trial Court shall not grant any unnecessary adjournments to the parties unless if it is utmost necessary due to any emergency / exigency in adjudicating and deciding the Suit proceedings.

14. Parties are directed to co-operate with the learned Trial Court for expeditious disposal of the Suit proceedings as directed.

15. All contentions of the parties are expressly kept open.

16. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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