

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10746 OF 2022
WITH
INTERIM APPLICATION NO. 18002 OF 2022

Prakash M. Gurnani

.. Petitioner

Versus

Pushpa K. Rahumalani & Ors.

.. Respondents

.....

- Mr. Yashvi Panchal for Petitioner

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 09, 2024

P. C.:

1. Heard Ms. Panchal, learned Advocate for Petitioner.
2. Present Writ Petition takes exception to the order dated 10.08.2022 passed by the Trial Court allowing Chamber Summons No. 471/2021 filed under O. VI, R. 17 of the CPC.
3. Parties to the suit proceedings are siblings and original Plaintiffs who are real sisters instituted the Suit seeking declaration and permanent injunction in respect of the suit property. Defendants are brothers of Plaintiffs. Suit is filed in 2020 and the Chamber Summons for amendment is moved in 2021.
4. With the able assistance of Ms. Panchal, I have perused the suit plaint which is at page Nos. 18-31 of the Writ Petition and juxtaposed the averments made therein with the proposed amendment which is

contained in schedule of amendment at page Nos. 190-197. The averments which are made in paragraph No. 2 of the Suit plaint are specific and with respect to the suit property as also delineation of the suit property by the mother of the parties by way of a registered gift deed. Shares of the parties have been mentioned. When the schedule of amendment is read, it is seen that certain facts rather intervening facts which are subsequent to filing of the Suit have been narrated therein and Plaintiffs seek their proportionate undivided share in the suit property by metes and bounds. To deal with the properties, certain other reliefs are also claimed.

5. Objection is raised by the Defendants to the effect that allowing such amendment would change the nature of the suit proceedings.

6. Ms. Panchal would submit that though it is an admitted fact that substantial relief in respect of the suit property is claimed for by virtue of the prayers in the suit proceedings, the amendment seeking specific shares of the undivided shares in the suit flat ought not to have been allowed.

7. I have considered the submissions advanced by Ms. Panchal and perused the suit plaint as also the amendment and the impugned order. It is seen that admittedly this is a pre-trial amendment. A major portion of the amendment pertains to subsequent events *qua* the suit

property. The amendment which is sought is nothing but an extension to ensure that the undivided shares of the siblings in the suit property is enured to the benefit of the parties. What is seen is that the suit property is extremely valuable and that what is driving the parties to file proceedings in the Court for their share.

8. I find no reason to interfere with the reasons returned by the learned Trial Court while allowing the amendment. There is no withdrawal of any admissions whatsoever or of any pleadings or the averments made by the Plaintiffs. Needless to state that the rights of the Defendants to defend the suit proceedings shall be expressly kept open. All contentions of the parties are expressly kept open. The impugned order dated 10.08.2022 is therefore sustained.

9. Writ Petition is dismissed. Interim Application is also dismissed.

[MILIND N. JADHAV, J.]

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