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

WRIT PETITION NO. 2620 OF 2024

Pandurang Gunaji Kuvare

Petitioner

.. (Orig. Defendant No.4)

Versus

Chandrashekhar Sakharam Kuvare and Ors.

.. Respondents

WITH

WRIT PETITION NO. 2625 OF 2024

Pandurang Gunaji Kuvare

Petitioner

.. (Orig. Defendant No.4)

Versus

Chandrashekhar Sakharam Kuvare and Ors.

.. Respondents

-
- Mr. Sanskar Marathe, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 01, 2024.

P.C.:

- 1.** Heard Mr. Marathe, learned Advocate for Petitioner.
- 2.** The order impugned is dated 19.04.2023. It is an order passed in Application below Exhibit “103” which is filed under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short “CPC”) seeking an amendment to the Suit plaint. Suit is filed as Regular Civil Suit No.1 of 2014 in the year 2014 for partition. In the last 10 years the Suit has progressed to the stage of the Plaintiff having completed his entire witness action and now it is the turn of the Defendants.

However before the Defendants' witness action would commenced, Plaintiff has filed Application below Exhibit "103 seeking twofold amendment.

3. At this stage, Mr. Marathe would clarify that there are two Writ Petitions filed. One is Writ Petition No.2620 of 2024 which is at Sr. No.25 and second is Writ Petition No.2625 of 2024 which is at serial Sr. No.74 on the board today. He would clarify that Application filed below Exhibit "103" is for adding several other properties in addition to the Suit properties which are Defendants' self acquired properties and hence according to the Defendants would not be amenable to partition. He would next submit that, that Application filed below Exhibit "101" which is the subject matter of Writ Petition No.2625 of 2024 seeks to place and bring on record 31 documents in support of the Plaintiff's case which pertain to the years 1958 to 2008 including certain photographs of marriage ceremonies of some parties. Both these Applications have been allowed by the learned Trial Court and Defendants are therefore aggrieved before me in these two Writ Petitions.

4. In so far as addition of properties is concerned, it is the specific case of Defendants that these properties have no nexus whatsoever to ancestral properties and therefore cannot be considered and included for partition in the Suit. In so far as Application below

Exhibit “101” is concerned, Defendants would submit that documents which are now referred to and relied upon are a complete afterthought since they were available prior to the filing of the Suit proceedings with the Plaintiff and in that view of the matter, Plaintiff had knowledge about the same at the time of filing of the Suit proceedings and therefore reason for placing those documents on record now at this stage is only to fill up the lacunae in the evidence of the Plaintiff which has been already recorded by the learned Trial Court. He would therefore submit that the impugned orders are not sustainable. I see substance in the submissions made by Mr. Marathe and for that reason, I am inclined to stay any further proceedings before the Trial Court.

5. Another grievance raised by Mr. Marathe is the fact that the aforesaid amendment is sought after almost 10 years and in the aforesaid facts which are delineated by me it is clearly impermissible.

6. Hence, issue notice to the Respondents. Humdast permitted.

7. In addition to Court notice, Petitioner is directed to serve a copy of the Petition and this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

8. Respondents, if so desire can file their Affidavit-in-Reply on or before the next adjourned date.

9. It is clarified that, this Writ Petition shall be disposed of on the next adjourned date at the stage of admission itself.

10. It is further clarified that, if the Respondents do not remain present on the next adjourned date despite being served, this Writ Petition shall be disposed of after hearing the Petitioner.

11. Stand over to **18th March, 2024 at 02:30 p.m.**

12. It is directed that both the Writ Petitions shall now be tagged together considering that the impugned order have been passed in the same Suit proceedings.

[MILIND N. JADHAV, J.]

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