

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16657 OF 2024

Ambadas Dharma Thakare

.Petitioner

Versus

Revubai Punja Bharasat (since deceased)
through Lrs. & ors.

.Respondents

Mr. Aditya Chandak, Advocate, for the Petitioner
None for the Respondents

CORAM : S. M. MODAK, J.

DATE : 26.11.2024

P. C.

1. Heard Mr. Chandak, learned Counsel for the Petitioner.
2. The impugned Order dated 17.07.2023 passed by the learned Civil Judge, Senior Division, Nashik, thereby allowing amendment of the plaint was passed in a partition Suit. It was filed by in all four Plaintiffs before the Civil Judge, Senior Division, Nashik. Some of the Defendants including Defendant No. 3 filed Written Statement which is at page No. 94. The claim of the Plaintiffs was disputed. There is an alternate plea taken in paragraph No. 21 on page No.

102. The three lands bearing Gat Nos. 73, 56 & 62 were not included in the suit properties. The Defendant Nos. 1 to 3, 6, 11 & 13 filed their Written Statements on 09.08.2010.

3. After completion of pleadings, all the contesting parties have adduced their evidence. At that juncture, the Plaintiffs have moved an Application for amendment of the plaint which is on page No. 18. The description of the additional property is given in paragraph Nos. 1A, 1B & 1C. **The Plaintiffs contend that these are joint family properties. This Application is made on the basis of the plea taken in the Written Statement which is at page No. 18.**

4. The law of partition is all the properties belonging to the joint Hindu family need to be included in a Suit so as to have complete adjudication amongst the parties. The contention is the said amendment is sought belatedly when both the parties have adduced their evidence. **As per the roznama dated 16.12.2016, it implies that the Plaintiffs do not want to adduce additional evidence.** If it is so then it is submitted that **the present Petitioner even does not want to adduce additional evidence. This submission is accepted.**

5. It is true this amendment is sought after commencement of the trial. Proviso to Order VI, Rule 17 of the Code of Civil Procedure, 1908 is applicable when amendment is sought at later stage. The test of due diligence has to be satisfied. **When Written Statement was filed in the year 2010, the Plaintiffs were required to take immediate steps but they have not taken.** The principle of due diligence has to be interpreted in the context of the law about partition.

6. It says all the properties need to be included. In view of the same, the Order needs to be sustained. However, the trial Court has lost sight of the fact that this Application was filed belatedly and even after long period from filing of Written Statement. The trial Court could have imposed costs on the Plaintiffs. Considering the short issue, instead of issuing notice and keep it pending, I have disposed of the petition at the beginning itself.

7. With these observations, I proceed to pass the following Order.

O R D E R

(i) The Writ Petition stands allowed.

(ii) The trial Court is directed to hear the Plaintiffs and Defendant and to saddle costs of appropriate amount on the Plaintiffs. There are no observations of merits of the suit. It be disposed of as per merits.

8. The Writ Petition stands disposed of.

(S. M. MODAK, J.)