

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR



WRIT PETITION NO. 6949 OF 2023

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| 1 Bhujangrao Anandrao Mohod,
Aged 80 years, Occu. Agriculturist | <u>PETITIONERS</u> |
| 2 Sau. Usha Bhujangrao Mohod, Aged about 70
years, Occu. Household, Both the petitioners
are resident at Sahakar Nagar, New Cotton
Market, Amravati, Tq. & Dist. Amravati | |

VERSUS

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| 1 Sau. Jyotsna W/o Pramodrao Thakare,
Aged about 48 years, Occ. Household, R/o
Madhapuri, Tq. Murtizapur, Dist. Akola | <u>RESPONDENT</u> |
| 2 Sau. Manjusha W/o Sanjayrao Metkar
Aged about 41 years, Occ. Household, R/o
Paliwal Nagar, Near Saket Nagar, Indore, Tq.&
Distt. Indore(M.P) at present R/o C/o Shri
Bhujangrao Mohod, R/o Sahkar Nagar, New
Cotton Market, Amravati, Tq. & Distt. Amravati | |
| 3 Sau. Manisha W/o Sanjay Kalmegh,
Aged about 38 years, Occ. Household, R/o
Sambodhi Colony, Rahatgaon, Amravati, Tq. &
Dist. Amravati | |
| 4 Sau. Kanchan W/o Sanjay Patil, Aged about 36
years, Occ. Household, R/o 404-H,
Radhakrishna Park, Shri Malang Road, Near
Chetna School, Axis Bank Atm, Pasvali-421306,
Kalyan-E, Thane, Distt. Thane | |
| 5 Damodhar s/o Uttamrao Gawande,
Aged about 50 years, Occ. Agriculturist, R/o
Madhan, Tq. Chandur Bazar, Distt. Amravati | |

Mr. V.A. Kothale, Advocate for petitioners
Mrs. S.W. Deshpande, Advocate for Respondent

CORAM : BHARAT P. DESHPANDE, J.

DATE : 11th MARCH, 2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard both the parties.

2. The challenge in the present petition is against the impugned order dated 26/09/2023, passed below Exh.105. By the impugned order, the learned trial Court refused to amend the

written statement filed by the petitioner i.e. defendant No.6 on the ground that such amendment was not carried out when the original written statement was filed and the matter is fixed for final hearing.

3. The learned counsel for the petitioners would submit that if the petitioner was added as defendant No.6 on the basis of intervention application filed by her and at that time, the suit for partition was already fixed for evidence of the parties. After the petitioner was added as defendant No.6, the written statement was filed and thereafter the suit proceeded further. However, the defendant No.6 realized that though the written statement was filed, there is no mention of her share in the suit property in case the suit is decreed for partition. Accordingly, the application was filed only for amending the written statement by adding the claim of the petitioner with regard to 1/6th share in the suit properties. The learned trial Court rejected such application on the ground that there is no explanation as to why such plea was not taken in the written statement and that evidence of the parties is already closed.

4. The learned counsel for the respondent would submit that the petitioner by filing the pursis dated 01/02/2023, disclosed that the said defendant is not leading any evidence in the matter. Accordingly, the suit was fixed for final arguments.

5. The learned counsel for the respondent further submitted that the application filed subsequently is only to delay the matter and avoiding the directions given by this Court for disposal of the said suit.

6. Admittedly, the suit is for partition and separate possession filed by the respondent against the petitioners and other respondents. The present petitioner was joined as defendant No.6 when the matter was already proceeded for evidence of the parties. The written statement filed by the petitioner would show that she opposed the contentions of the plaintiffs with regard to partition and separate possession. However, it is well settled proposition that the defendant can take inconsistent and alternate pleas.

7. The application filed for intervention is clearly go to show that the petitioner raised her claim of share in the suit property.

8. The issues framed by the learned trial Court would further show that the question regarding the suit property being the ancestral property is also required to be decided by the Court. The other issues would further show about the claims raised by the respective parties, including the Will executed by two of the parties.

9. In the suit for partition, all the parties are required to disclose their respective share. Accordingly, if the suit is decreed, the Court will have to ascertain particular share of the defendant No.6 / petitioner herein. Accordingly, the amendment, which is sought is only with regard to claim of her right to 1/6th share, which was not found in the original written statement.

10. Since the petitioner was impleaded in the said proceedings when the evidence was already going on of the other parties, the proviso to Order VI Rule 17 of the Code of Civil Procedure (CPC) will have to be interpreted differently. In the present matter, the explanation is given by the petitioner as to why the proposed amendment is necessary in order to decide the real question / issue in the suit. Unless the contention of the petitioner is not allowed to be incorporated in the written statement, it will be

difficult for the learned trial Court to ascertain the exact share of the present petitioner.

11. In view of the above observations, the amendment as proposed in the application needs to be allowed.

12. However, in the present matter, since the evidence is already over and the matter is fixed for final hearing, the petitioner could be allowed to amend the written statement and lead evidence, if any within a period of one month from today. The learned trial Court would thereafter decide the suit as expeditiously as possible and within a period of three months thereafter.

13. In view of the above, the petition stands disposed of. No costs.

14. Rule is made absolute in the above terms.

15. Parties to act on the authenticated copy of this order.

(BHARAT P. DESHPANDE, J.)