



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

976 WRIT PETITION NO. 1665 OF 2022

PARAJI DAGDU GAIKWAD AND OTHERS
VERSUS
HIRABAI MAHADEV GAIKWAD AND OTHERS

...

Advocate for the Petitioners : Mr. Gandhi Amol S.
Advocate for Respondent Nos. 1 & 2 : Mr. Rohit Patwardhan h/f Mr.
Jadhav Satej S.

...

CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 17.12.2025

PER COURT :

1. Heard the learned Counsel for the respective parties.
2. By way of the present petition, the petitioners are assailing the order dated 24.11.2021 passed below Exhibit 43 by 8th Civil Judge, Senior Division, Ahmednagar in RCS No. 495 of 2019, whereby, an application filed by original respondent Nos. 1 to 4/Petitioners for amendment in the Written Statement came to be rejected.
3. Learned Counsel Mr. Gandhi, for the petitioners submits that the suit is for partition and separate possession and the earlier Written Statements were filed at Exhibits 24 and 34, wherein the properties were mentioned to be ancestral. Now, by way of amendment properties are intended to be called self acquired ones. He further submits that petitioner can take contrary stand and it would for the trial Court to consider the same after the parties lead evidence. Though the plaintiff has filed affidavit of examination-in-chief, the plaintiff would get opportunity to cross-examine the defendant and to refute the contention raised in the

Written Statement when defendant tenders his affidavit of examination-in-chief. Allowing the amendment application would not change the nature of suit as the suit is for partition and separate possession.

4. Per Contra, the learned Counsel Mr. Patwardhan h/f Mr. Jadhav, for respondent Nos. 1 & 2 submits that the stage of evidence is already commenced and the petitioners have not shown due diligence and therefore it would not be proper to allow the application for amendment in the Written Statement.

5. I have gone through the order passed by the learned trial Court. As the suit is for partition and separate possession and the plaintiff has filed his affidavit of examination-in-chief, the defendants may take different stand in their Written Statement and it would be for the trial Court to decide the claim of the parties after they have led their evidence.

6. Therefore, I deem it appropriate to allow the Writ Petition by setting aside the order passed by the trial Court.

7. In view thereof, the Writ Petition is allowed. The order dated 24.11.2021 passed below Exhibit 43 by 8th Civil Judge, Senior Division, Ahmednagar in RCS No. 495 of 2019 is quashed and set aside.

8. The application below Exhibit 43 is allowed.

(SIDDHESHWAR S. THOMBRE, J.)