



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2800 OF 2022

Gajrat Suppadsing Bamhnavat Died Through Lrs Aruna Gajrat
Mamhnavat And Others

VERSUS

Suppadsing Tanhasing Bamhnavat And Others

Mr. V. D. Dathade, Advocate for petitioners
None for respondents

CORAM : R. M. JOSHI, J.

DATE : 03rd January, 2025

PER COURT :-

1. Petitioner is plaintiff who challenges the order of rejection of Exhibit 62 filed by him before the trial Court for amendment to the plaint. By said application, plaintiff has sought to add the property claiming it to be the ancestral property.

2. The said application was contested by the defendants by filing their say contending that it was specifically stated in the written statement that the suit property is self acquired property of Suppadsing. It is thereafter application/affidavit in lieu of examination in chief is filed by plaintiff. During his cross examination, he admitted that the suit property is self acquired property of Suppadsing. After giving this admission, application Exhibit 62 came to be moved contending that at the time of filing of petition inadvertently, the said property is not

included in the plaint.

3. Learned trial Court has rejected the said application for the reason that trial has commenced and the plaintiff is partly cross examined. The trial Court has also held that the plaintiff has not stated as to why the said amendment could not be raised at appropriate time. Learned counsel for the petitioners submits that the original suit was filed by the father of petitioners. It is his further contention that the property which is sought to be included in the plaint is situated at Aurangabad and as such for want of knowledge thereof, the same was not added in the original plaint.

4. The suit is for partition and separate possession of the said properties. There is specific plea of the plaintiff that the suit properties are ancestral properties. He did not add the property which is now sought to be added in the suit now by amending thereto for want of knowledge thereof. In this backdrop, the admission given by the petitioner that the suit properties are self acquired properties of the Suppadsing, is required to be considered.

5. Learned counsel for the petitioners submits that the trial Court has committed error in considering the admission given by the

plaintiff about the suit property being self acquired property of Suppadsing for rejecting application for amendment to include another property which is ancestral property of plaintiff and defendant. He further submits that the suit is for partition and in absence of inclusion of all the properties, the same would not be maintainable and as such, it ought not to have been dismissed.

6. None appeared for the respondents in spite of the service of notice. This indicates that respondents have not inclination to oppose the petition.

7. No doubt, Order VI Rule 17 requires the plaintiff to show due diligence for the purpose of seeking amendment to the plaint. It however cannot be ignored that this suit is for partition and as per the settled position of law unless all the ancestral property of plaintiff and defendants are included therein, the suit would not be maintainable. The learned trial Court has committed error in rejecting application on the ground that plaintiff admitted in cross examination that suit properties are self acquired properties of Suppadsing. The property sought to be included in the claim is not admitted as self acquired property. Apart from this, it is not open for the Court to consider the merit of the amendment sought at this stage. In the facts of the case and more

particularly having regard to the nature of the suit, the trial Court ought to have allowed the application by imposing costs. As such, impugned order is set aside. Application Exhibit 62 stands allowed subject to cost of Rs. 2,000/- payable by the petitioner/plaintiff to defendants.

(R. M. JOSHI, J.)

bsj