



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL WRIT PETITION NO. 4949 OF 2022

Balasaheb Dhondiba Alias Dhondiram Yadav ...Petitioner

Versus

Bhanudas Dhondiba Alias Dhondiram Yadav

Died Through Lrs

Chhabubai Bhanudas Yadav And Others ...Respondents

- Dharashive Mahishankar L., Advocate for the Petitioner.
- Mr. Undre Vikram S., Advocate for the Respondent Nos. 1(2) and 1(3).

CORAM : R. M. JOSHI, J

DATE : SEPTEMBER 30, 2025

PER COURT :

1. This petition take exception to the order passed below Exhibit 24 in RCS No.856 of 2017, whereby application filed by the plaintiff for amendment to the pleadings under Order 6 Rule 17 came to be allowed.

2. There is no dispute about the fact that RCS No.856 of 2017 came to be filed for declaration of ownership and perpetual injunction. After written statement was filed by the defendants, the application Exhibit 24 was moved for seeking amendment to the pleadings incorporating prayer for partition and separate possession of the suit properties. This application was resisted by the defendants claiming that there is already partition effected in the year 1982. The Trial Court however allowed the application by imposing costs of ₹ 500.

3. The learned counsel for the petitioner – original defendants contends that the amendment sought to be made by the plaintiff is false on the face of it. It is his submission by referring to the mutation entry No.1107 that there has already been a partition of the suit properties, as back as in the year 1986. Thus, it is submission that the Trial Court committed error in allowing the application Exhibit 24.

4. The counsel for the respondent supports the impugned order.

5. There is not dispute about the fact that the application for amendment to the pleadings is filed before commencement of the trial. There is no claim of the defendant that the amendment sought is barred by limitation. Any other defence sought to be taken by the defendant would be available for the defendant to agitate during the course of the trial. It is settled position of law that the merit of the amendment cannot be gone into by the Court at this stage.

6. Having regard to the afore-stated facts this Court finds no perversity in the order impugned. Hence, the petition is stand dismissed.

7. The learned counsel for the both sides seeks appropriate directions to the Trial Court for expeditious disposal of the suit. Since the suit is pending from the year 2017, Trial Court to expedite the same.

(R. M. JOSHI, J.)