



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

61 WRIT PETITION NO. 5045 OF 2023

TULSHIRAM JALBA BHURE
VERSUS
VITHAL JALBA BHURE AND OTHERS

Mr.K.M. Nagarkar h/f. Ms.Smita S. Kulkarni, Advocate for the petitioner.
Mr.U.B. Bilolikar, Advocate for respondent Nos. 1,2 and 5.

CORAM : KISHORE C. SANT, J.
DATE : 29.01.2025

PC :-

01. Heard learned Advocates for the parties. This petition is taken up for final disposal at the stage of admission by consent of the parties.

02. The petitioner has approached this Court challenging an order passed by the learned District Judge-1, Biloli dated 09.01.2023 on an application for amendment below Exh.15, in RCA No.31 of 2019. The petitioner is original plaintiff and the respondents are original defendants in the said suit filed for partition.

03. The learned Trial Judge by judgment and order in RCS No.50

of 2012 dismissed the suit of the plaintiff for non-joining of all the properties and answered issue No.5 against the petitioner. The petitioner, thereafter, filed regular civil appeal. In the appeal, he filed application for amendment seeking insertion of one property which was not added in the suit in prayer clause. He also shown readiness to pay the Court fees. He further prayed for declaration that the sale-deed No.470/2011 and 1480/11 of land Block No.167 at village Adampur are not binding upon him. Thus, at the appellate stage, he wanted to amend the plaint. The learned District Judge specifically observed this conduct of the plaintiff. It is also observed that in the cross-examination a specific question was asked to the plaintiff as regards the property which was not shown in the suit. The Appellate Court thus observed that inspite of several chances, the petitioner did not amend the suit at proper stage. Now only after suffering the judgment, the application is filed. His application, thus, came to be rejected.

04. Learned Advocate for the petitioner Mr. Nagarkar vehemently argued that the Appellate Court ought to have considered the application liberally. He submits that before the Appellate Court, the petitioner had relied upon following judgments:-

- 1) Ashok Daga Patil Vs. Daga Yadav Patil & Ors., Civil Revision Appln. No.767 of 2002 decided on 18.07.2002.
- 2) Mahila Ramkali Devi & Ors. Vs. Nandram and Others, Civil Appeal No. 2366 of 2010 decided on 14.05.2015.
- 3) Usha Devi Vs. Rijwan Ahmad and others, 2009 (1) BCJ 11 (SC).
- 4) Baldev Singh and Others Vs. Manoharsingh and Others, 2006(3) BCJ 185 (SC).
- 5) Bharat Petroleum Corporation Ltd. Vs. Precious Finance Investment Pvt. Ltd. 2007 (1) BCJ 111.

. He submits that the judgments are not properly appreciated by the Appellate Court. Substantial rights of the parties are involved. If the amendment is not allowed, the petitioner would be deprived of prosecuting his substantial right. He, thus, prays to allow the application.

05. Learned Advocate Mr. Bilolikar for the respondents vehemently opposes the petition. He drawn attention of this Court to the observations made by the Trial Court in para 30 of the order. It is recorded by the Trial Court that the property which is not included in the suit property is one which was not in possession of the plaintiff. He already sold that property and therefore deliberately the property was not added. He thus submits that looking to the conduct of the petitioner, it is clear that the petitioner is not coming with clean hands and prays for

rejection of the writ petition.

06. Having heard the parties, undisputedly one of the properties i.e. house No. 215 from village Adampur was not mentioned in the suit. There was also no prayer about the declaration. The plaintiff-petitioner has even avoided to pay Court fees and suppressed the fact as regards the property sold by him. In such circumstances, this Court finds that no indulgence needs to be shown to the petitioner.

07. The petition stands dismissed with no order as to costs.

[KISHORE C. SANT, J.]