



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14328 OF 2023

Sanjay Kisanrao Khopade
VERSUS
Kiran Kisanrao Khopade And Others

- Mr. P. C. Mayure, Advocate for the Petitioner
- Mr. M. S. Kulkarni, Advocate for the Respondent Nos. 1 and 2
- Mr. P. P. Mandlik, Advocate for Respondent No. 3

CORAM : R. M. JOSHI, J
DATE : FEBRUARY 24, 2025

PER COURT :

1. This Petition takes exception to the order passed below Exh. 45 in Probate Application No. 04/2021 dated 01.04.2023 whereby learned Trial Court has rejected the application filed under Order VI, Rule 17 of Code of Civil Procedure for amendment to the plaint.

2. There is no dispute about the fact that on 23.04.2021 Probate Application No. 04/2021 came to be filed by the Petitioner against the Respondents. In the said application, probate is sought in respect of will deed dated 15.01.2020 and supplementary will dated 15.12.2020.

3. It is the case of the Petitioner that during the pendency of this application, in another proceeding before the Revenue Authorities, the Petitioner was required to bring on record the declaration dated 08.12.2020 in respect of these two documents. After written statement is duly filed and issues are framed, the present application Exh. 45 was filed for amendment to the plaint.

4. Learned Trial Court rejected the application solely on the ground that the Plaintiff was unable to show due diligence for not bringing the said facts on record though the facts pertain to the period prior to the filing of the main application.

5. Learned Counsel for the Petitioner submits that the Trial Court has rejected the application solely on the ground that no due diligence is shown, however, the order in question is passed in ignorance of the fact that the probate application was filed on 23.04.2021 whereas occasion arose to place on record declaration dated 08.12.2020 at later point of time. This, according to him, is sufficient explanation to seek amendment.

6. Learned Counsels for Respondents supported the impugned order. It is their contention that apart from the fact that the Plaintiff has failed to show due diligence in order to permit amendment after commencement of trial, the facts sought to be raised by Plaintiff by way of amendment are inconsistent to the original plaint. It is their contention that once declaration is sought in respect of document dated 08.12.2020, it is not permissible for the Plaintiff to seek probate in respect of will and supplementary will dated 15.01.2020 and 15.12.2020 respectively. In short, it is their contention that the Petitioner is seeking independent probate in respect of the document dated 08.12.2020 and hence, amendment cannot be allowed.

7. No doubt, after filing of the written statement issues are framed and as such, the trial has commenced. In such circumstances, the Plaintiff was required to show some reason for not bringing the facts in respect of declaration dated 08.12.2020 on record at the time of filing of the application, which gets explained when Plaintiff shows that this document was required to be introduced in revenue proceeding on

09.07.2021. Thus, this is not the case that there is no explanation whatsoever given by Plaintiff for seeking amendment.

8. Now question arises that the amendment is relevant. The application Exh. 45 indicates that it is the case of the Plaintiff that on 08.12.2020 the declaration is given in respect of the will deed dated 15.01.2020 and supplementary will dated 05.12.2020. Thus, it cannot be said that the amendment is irrelevant to the probate sought by the Petitioner/Plaintiff.

9. As far as the contention of the learned Counsels for Respondents about the prayer being inconsistent to the pleading and original relief is concerned, it is not open for the Court at the time of deciding application for the amendment to consider merits thereof. Much less the Court is required to ascertain as to whether the Plaintiff would be ultimately entitled to get the relief sought. *Prima facie* this Court finds no inconsistency in the amendment sought by the Plaintiff in order to reject the same.

10. It is always in the interest of the parties that disputed questions are determined on merit. Unless, prejudice is shown to have been caused amendment needs to be allowed. Learned Trial Court rejected application ignoring the reason put-forth for amendment at this stage and the relevancy of the same. The order impugned, therefore, does not sustain. Petition, therefore, stands allowed. Application Exh. 45 stands allowed. Amendment be carried out within four weeks from today before Trial Court. Trial Court to permit written statement to be filed by Respondents to the amended plaint.

(R. M. JOSHI, J.)