

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8600 OF 2022

Rahematbee Alias Rihana Shalam Mulani

VERSUS

Yusuf Fareed Patel And Others

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Advocate for the Petitioner : Mr. Shaikh Shoyab Mh Shaikh Isaril

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATED : DECEMBER 04, 2025

PER COURT :

1. Heard Mr. Shaikh, learned counsel for the petitioner.
2. Present petition is directed against the order dated 09.03.2022 passed below Exhibit-91 by the learned 2nd Joint Civil Judge, Junior Division, Paranda in R.C.S. No.257 of 2011, whereby the application filed by the plaintiff under Order 6 Rule 17 of the Civil Procedure Code came to be rejected. The learned Trial Court while considering the application recorded the finding as under :

“4) On perusal of the record, it appears that plaintiff has filed present suit for partition. Defendant no. 1 to 5 appeared and filed written statement below Exh. 23 on 24/01/2012. Thereafter, defendant no.1 has filed amended w.s. below exh. 69 on 15-04-2015 and contended that partition has been effected between plaintiff, defendant no.1, 3 to 5's father and husband of defendant no. 2 in the year 1989 and accordingly M.E. No. 445 has been sanctioned on 30-03-1989. Further, it has been pleaded that, defendant no. 1 has effected partition in respect of his property in the year 2009 and allotted property to his three son Ajij, Arbaz and Ayaz and accordingly M.E. No. 1463 sanctioned

on 02-09-2009 before filing present suit. Issues have been framed below Exh. 24 on 19-06-2012 and additional issues have been framed on 25-01-2021. Now plaintiff wants to amend plaint and correct pleading and prayer about non binding of mutation entries. Plaintiff has contended in application that she came to know about M.E. No.1463 on 26-08-2021 but w.s. filed on record below exh. 69 dated 15-04-2015 discloses that said fact has been mentioned in the w.s. It also discloses that plaintiff has received copy of amended w.s. on 15-04-2015. Therefore, admittedly plaintiff got knowledge about M.E. No.1463 on 15-04-2015 itself.

5) Plaintiff by way of proposed amendment wants to claim relief of declaration. Plaintiff also has not given any justifiable grounds as to why she has not carried out amendment in respect of prayer about sale deeds bearing no. 1069/1992, 619/1998, M.E. No.445 and 1463 since filing of w.s. by defendant no. 1.

6) In view of O 6 R 17 of Code of Civil Procedure court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between parties, provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. Plaintiff has not given any reason for filing application for amendment after commencing trial. Therefore, there is no any grounds about due diligence of plaintiff for filing present application at this stage, after commencing trial. If present application is allowed, it will cause serious prejudice to the defendants side and also change the nature of suit. Therefore, I do not find any merit in the application.”

3. I have gone through the findings recorded by the learned Trial Court. The learned Trial Court has recoded the finding that if such amendment is permitted, it will change the nature of suit. Even it is specifically observed that the petitioner has not raised any ground in the application stating why the amendment is necessary and the application was filed after commencement of the trial.

4. In view thereof, I do not find any reason to interfere with order dated 09.03.2022 passed below Exhibit-91 by the learned 2nd Joint Civil Judge, Junior Division, Paranda in R.C.S. No.257 of 2011.

5. In view thereof, the petition stands dismissed. No order as to cost.

(SIDDHESHWAR S. THOMBRE, J.)