



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

Writ Petition No. 8914 Of 2024

Kishor s/o. Ganpatrao Sagar,
Age : 71 years, Occ.Business,
R/o.Mens, Plot No.B-29,
MIDC,Latur,Tq.&Dist.Latur

.. Petitioner

Versus

Smt.Suman w/o.Tulshiram Sagar,
Age : 82 years, Occ.Household,
R/o.Vidhyut Nagar Corner, Near
Rajiv Gandhi College, Nanded,
Tq.&Dist.Nanded.

.. Respondent

* Mr. Shailendra S. Gangakhedkar , Advocate for the Petitioner.

* Mr. R.N.Chavan, Advocate for Respondent.

CORAM : SHAILESH P. BRAHME, J.

DATE : 18th FEBRUARY 2025

FINAL ORDER :

1. Heard both sides finally at the admission stage.
2. The caveat was filed by learned counsel Mr. B.N.Gadegaonkar. Mr.S.R.Bagal holding for Mr. B.N.Gadegaonkar prays that he may be discharged. His client

has engaged Advocate Mr. R.N.Chavan. In view of this, apperance of Mr. B.N.Gadegaonkar stands discharged.

3. Petitioner who is original-plaintiff has taken exception to the order of rejection of his application below Exhibit-37 seeking amendment to plaint passed on 24.06.2024. He has filed Special Civil Suit No. 56 of 2022 for declaration, partition, possession and injunction. Application Exhibit-37 was submitted on 12.04.2024 after framing of the issues. He sought amendment to the pleadings by incorporating paragraph nos. 3A,8A and 8C.

4. Learned counsel for the petitioner submits that proposed amendment is explanatory in nature that is not changing the nature of the suit nor the reliefs claimed. He would submit that evidence has not been commenced and no prejudice would be caused to the respondent. It is further submitted that proposed amendment is necessary to decide real controversy between the parties. It only elucidates the earlier pleadings.

5. *Per contra*, learned counsel Mr.Chavan appearing for the

respondent vehemently opposes the submissions of the petitioner. He would submit that suit is filed by suppressing material facts. Earlier suit filed by the petitioner bearing Special Civil Suit NO. 131 of 2024 was withdrawn. Petitioner is trying to incorporate totally new theory based on will executed by Bhivrabai. He would submit that when the petitioner was unsuccessful in securing temporary injunction from the trial court as well as lower appellate court, treacherously he is banking upon new theory. The purport of the proposed amendment is to dislodge the claim of the respondent which is impermissible.

6. It is further submitted that trial has already commenced and there is no due diligence on part of the petitioner to seek amendment. It is further submitted that the petitioner was aware of facts mentioned in the proposed pleadings and those could have been incorporated in the original plaint. He would further submit that since 1995 to 2022, petitioner did not claim partition. Lastly, it is submitted that there are no bonafides on part of the petitioner.

7. Learned counsel Mr.Chavan placed reliance on the judgment of this Court in the matters of **Sau.Anita Anant Kaidalwar vs.Suhas Manoharrao Umathe and others** in writ petition No.251 of 2024 and **Damodhardas Govindprasad Sangi vs. Fatehsinh and others** in writ petition No.6971 of 2022.

8. Petitioner has filed suit for partition, possession, declaration and injunction. The issues were settled in the year 2023. The affidavit of examination-in-chief was filed by the respondent. He is not cross-examined yet. In view of observation of Apex Court in paragraph no. (8) of **Vidyabai and Ors. Vs. Padmalatha and Ors.** reported in (2009)2SCC409, filing of affidavit of examination would amount to commencement of proceedings. Though the trial commenced when application Exhibit-37 was filed, it did not proceeded further. There is no rule of thumb that amendment to the pleadings is impermissible after the commencement of the trial. If the proposed pleadings are necessary to decide the

controversy, those are permitted to be amended. It depends on the facts and circumstances of each case.

9. In the present case only amendment to pleadings is solicited. The suit remains that of relief of partition, declaration, possession and injunction. To elucidate earlier pleadings, proposed amendment is required. I am of the considered view that proposed amendment is not changing the nature of the suit.

10. I have gone through impugned order especially paragraph nos. 5 and 6. The Learned Judge has virtually made comments on the merits of the proposed pleadings which is not within the purview of enquiry while considering application under Order 6 rule 17. The trial court has to undertake the scrutiny on merits in full-fledged trial to adjudicate rival claims of the parties. Mere inconsistent pleadings may not operate as obstacle for permitting the amendment. The conduct of the petitioner and his bona-fides can be tested at the conclusion of the suit. The observations of learned judge in paragraph

no.6 are totally exceeding the jurisdiction.

11. Learned counsel Mr. Chavan relied on the judgment of **Sau.Anita Anant Kaidalwar** (supra). I have gone through paragraph nos. 18,35 and 37. The observation in paragraph no.18 is against the observations of Supreme Court in paragraph no.8 of **Vidyabai and Ors.**(supra). The petitioner has disclosed the reasons in paragraph no. 4 of application at Exhibit-37. The facts of the case cited are distinguishable. The judgment can be of no help to the respondent.

12. Reliance is placed on next judgment of **Damodhardas Govindprasad Sangi** (supra). I have gone through paragraph nos.12 and 13 of the judgment. Reliance was placed on the ratio laid down by the Hon'ble Supreme Court in the matter of **Life Insurance Corporation vs.Sanjeev Builders Private Ltd & Anr.** reported in AIR 2022 SC 4256. I propose to follow the same. No case is made out by the respondent to reject application of the petitioner. Similarly, the next judgment cited by respondent in the case of **Radheshyam Ramlal Dhanuka**

vs. Alok Jajodia and Ors. in writ petition No.8760 of 2023 is also not helpful to him.

13. I do not find that any prejudice would be caused to the respondent if amendment to the plaint is permitted. The respondent would be at liberty to file additional written statement. Hence, I pass following order :

ORDER

- (i) The writ petition is allowed in terms of prayer clause 'B'.
- (ii) Learned Presiding Officer shall decide Special Civil Suit No.56/2022 expeditiously.
- (iii) The parties shall cooperate for the disposal of suit.

[SHAILESH P. BRAHME]

JUDGE

vsj