



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

WRIT PETITION NO. 10478 OF 2023

Suman Eknath Kopanar,
Age – 58 years,
Occu. - Household and Agriculture,
R/o. Rakshaswadi,
Tal. Karjat, Dist. Ahmednagar .. Petitioner

Versus

1. Sukhadeo Hira Kachare,
Age – 53 years, Occu. : Agriculture,
R/o. Wadagaon Tampura,
Tal. Karjat, Dist. Ahmednagar
2. Narmada Pira Sul,
Age – 68 years, Occu. : Agriculture,
R/o. Wadagaon Tampura,
Tal. Karjat, Dist. Ahmednagar .. Respondents

Mr. Sanket Kulkarni, Advocate a/w Mr. Rohit Dhongde, Advocate h/f
Mr. Dilip B. Rode, Advocate for the Petitioner.
Mr. Pushpak U. Gujrathi, Advocate h/f Mr. Vijay P. Latange, Advocate
for Respondent No. 1.

CORAM : KISHORE C. SANT, J.

DATED : 02nd JANUARY, 2025.

P. C. :-

. A challenge in this writ petition is raised to an order passed by
the learned District Judge-2, Shrigonda dated 03.05.2023 in R.C.A.
No. 239/2019. By way of impugned order the learned appellate judge
has rejected an application of the present petitioner/appellant seeking

amendment to the plaint at the appellate stage and for adding party. The present petitioner is the original plaintiff who had filed a suit for partition and separate possession against the present respondents/original defendants.

2. The case in short is that, the petitioner filed a suit stating that she is having share in the suit properties being sister of the respondents. The lands were belonging to father of the petitioner and respondents. After death of father and mother now she is having 1/3rd share in the suit properties. The respondent No. 1 during the life time of father got his name entered in the suit properties in revenue record. It is specific case that, there is no partition effected earlier. The learned Civil Judge Junior Division, Karjat vide judgment and order dated 18.09.2018 dismissed the R.C.S. No. 74/2015 mainly on the ground of non joinder of necessary parties and that all the properties of the joint family are not mentioned in the suit and further the defendant has proved that one of the properties i.e. Gat No. 139 was self acquired property of his own. The petitioner, therefore, approached the learned District Judge by filing Regular Civil Appeal No. 239/2019.

3. The petitioner filed an appeal in District Court. In the said appeal, she filed an application for amendment. By way of amendment

she sought to give specification and the measurements of the land and to add necessary parties to the suit with some incidental averments.

4. The respondent No. 1 opposed the application vehemently. The ground of objection firstly is that, an objection was raised in the written statement in the suit about non joinder of necessary parties and the properties. In spite of said objection the petitioner did not bother to file an application for amendment to the plaint. The persons who purchased the land were necessary parties to the suit. The second ground of objection was that, the suit is already disposed and no amendment can be brought after commencement of the trial in view of proviso to Order VI Rule 17 of the Code of Civil Procedure (for short "C.P.C.").

5. The learned District Judge – 2 considered the arguments and judgments cited before him and dismissed the application. The petitioner is thus before this Court.

6. The learned advocate Mr. Kulkarni for the petitioner vehemently argued the petition. The petitioner happens to be a poor lady who is not much educated and therefore, inadvertently no amendment to plaint was filed in the trial. If the application is not allowed, she would be deprived of her valuable right to get the land partitioned. For

technical reasons the substantive rights of the parties should not suffer. He submits that, the approach of the Court in the matters of grant of amendment needs to be liberal. The learned District Judge has taken hyper technical approach and rejected the application and therefore, the impugned order needs to be quashed and set aside. He relies upon the following judgments :

- (i) **Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Ors.** reported in AIR 1957 SC 363.
- (ii) **Mallavva and Ors. Vs. Kalsammanavara Kalamma (Since Dead) by Legal Heirs and Ors.** reported in MANU/SC/1395/2024.
- (iii) **N. C. Banerjee & Company Vs. Manoj Balkrishna Shah & Ors.** reported in 2012 (2) Bom. C. R. 775.
- (iv) **Olga Rodrigues & Ors. Vs. Christopher Pinto & Ors.** reported in 2018 (1) ALL MR 520.

7. The learned advocate for respondent No. 1 strongly opposes the petition. He submits that the learned District Judge has rightly considered the proviso to Order VI Rule 17 of the C.P.C. which requires that the party seeking amendment has to show that in spite of due diligence such party could not raise the matter before commencement of trial. In the present case, in the written statement itself the ground of non joinder of the parties was raised. Even a question was asked in the cross-examination to the plaintiff while giving her evidence about

non joinder of parties. From the answers it is seen that she had the knowledge about necessary parties. It was open for the petitioner to make an application at least after filing of written statement by the respondents. The petitioner has failed to show due diligence on her part. He relies upon the judgment in the case of Vidyabai & Ors. Vs. Padmalatha & Anr. reported in (2008) 17 S.C.R. 505. He thus prays for dismissal of the writ petition.

8. In the case of Pirgonda Hongonda Patil (*supra*), the principles while allowing the amendment are well settled long back by the Hon'ble Apex Court. However, those are before the amendment of 2002 in C.P.C. By way of amendment a proviso is added to Order VI Rule 17 of the C.P.C. which reads as under :

“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.”

9. In view of this proviso, there is no doubt that it is required for the party seeking amendment to satisfy the Court about due diligence. It also requires that such application be filed before commencement of trial. No doubt, in this case the application is filed at the appellate stage. It is also seen from the record that by filing written statement

itself the objection about non joinder of parties was raised by the respondents and still no amendment was sought.

10. So far as the judgment in the case of **Mallavva and Ors.** (*supra*), the Hon'ble Apex Court had allowed the amendment where the application was filed at the stage of first appeal. The High Court in the first appeal had allowed the appellant before the High Court to amend the plaint. Paragraph No. 23 of the said judgment reads as under :

“23. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting malafide or that by his blunder, he had caused injury to his opponent which cannot be compensated for by an order of cost. (Mahila Ramkali Devi V. Nandram (Dead) through Legal Representatives : MANU/SC/0614/2015 : 2015 : INSC : 412 : (2015) 13 SCC 132.”

11. In the said case by way of amendment the party had prayed for adding the relief of possession when the suit was originally filed for declaration and injunction in respect of suit property. The Hon'ble Apex Court recorded that the amendment can be allowed at first appellate stage taking into consideration the interest of justice.

12. In the case of N. C. Banerjee & Company (*supra*), this Court held that when the amendment is necessary for determination of real question such amendment should be allowed.

13. In the case of Olga Rodrigues & Ors. (*supra*), the Court had considered the judgment in the case of Vidyabai & Ors. (*supra*). Ultimately, it is held that the application can be allowed by sufficiently compensating other side.

14. From the above judgments it is seen that, the amendment can be allowed even at the first appellate stage if facts and circumstances of the case permit so in the interest of justice. It is further seen that, the technicality should not come in the way of deciding the matter on merits. In the present case, the substantial right of the petitioner is involved. It needs to be kept in mind that present petitioner is a lady seeking right in the property of her father by filing suit for partition.

15. So far as the judgment in the case of Vidyabai & Ors. (*supra*), there are no two opinions about the proposition laid down in this case. The Hon'ble Apex Court in this case had found that the learned Trial Judge had exceeded its jurisdiction in passing the order allowing the amendment and in that view the appeal was allowed. The order of granting leave to amend was set aside.

16. In view of the above discussion, what appears is that, there is no absolute bar in allowing the application for amendment at the appellate stage looking to the dispute and the rights of the parties involved in the lis and if circumstances exists. In this case since the petitioner happens to be lady seeking her right in the ancestral properties, this Court finds that the amendment can be allowed by taking care of interest of the respondents. Hence, the following order :-

ORDER

- (i) The writ petition is allowed.
- (ii) The impugned order is quashed and set aside. The application below Exh. 15 in R.C.A. No. 239/2019 pending before the learned District Judge – 2, Shrigonda stands allowed subject to petitioner paying cost of Rs. 25,000/- (Rs. Twenty Five Thousand only) in the Appellate Court. The cost to be paid equally to both the respondents before the Appellate Court within a period of four (04) weeks from today.
- (iii) With this, the writ petition stands disposed of.

(KISHORE C. SANT, J.)

PS.B.