



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8632 OF 2022

Jitendra Sitaram Sonwane

....Petitioner

VERSUS

Rajendra Sitaram Sonwane & others

.....Respondents

Mr. P. V. Barde, Advocate for the Petitioner.

Mr. G. S. Rane, Advocate for Respondent No. 1.

CORAM : R. M. JOSHI, J.

DATE : 3rd OCTOBER, 2025.

PER COURT :

1. This Petition takes exception to the order passed below Exhibit 53 by the Trial Court in Regular Civil Suit No. 217/2017 whereby the Application for amendment of plaint so also addition of Defendants came to be allowed.

2. Parties are referred to as Plaintiff and Defendants for the sake of convenience.

3. Admittedly, Plaintiff filed suit for partition and separate possession of the suit properties claiming that the suit properties are joint family properties of Plaintiff and Defendants. The suit came to be opposed by the contesting Defendants by filing written statement.

Objection was raised with regard to the mis-joinder of Defendant Nos. 7 to 12 as party to the suit. Issues were framed on 04.01.2019 and evidence is yet to begin. At this stage, Application Exhibit 53 came to be filed for amendment to the plaint for adding certain properties as suit properties so also tenants in respect of the said properties as Defendants. This Application was opposed by Defendants, however, came to be allowed by impugned order.

4. Learned counsel for Petitioner submits that the Trial Court has committed error in allowing the Application contending that the Application filed for addition of properties is without any foundation and pleadings as to how the properties become joint family properties. It is his contention that some of the properties belong to wife of Defendant No. 1 which she inherited from her father. It is his submission that unless specific plea is raised regarding the properties being joint family properties, it would not open for the Trial Court to allow amendment. Insofar as addition of tenants is concerned, it is his contention that no relief is sought against the tenants and the suit is only for partition and separate possession of the joint family properties, therefore, tenants are not necessary party.

5. Learned counsel for Respondent No. 1 supports the impugned order. It is his contention that at this stage, the trial Court was not required to enter into the issue of correctness or otherwise of the amendment sought by the Plaintiff. It is his submission that it is open for the Defendants to oppose/resist the said pleading during trial. On the point of joining tenants as party Defendants, it is contended that other tenants are being joined as party at the time of filing of the suit and issue to that effect has also been framed by the Trial Court. To support his submission, he has placed reliance on judgment of Coordinate Bench of this Court in case of Gera Development Pvt. Ltd. and others vs. Sangita Shivaji Kate and others, **MANU/MH/0355/2025**.

6. Though issues are framed, evidence is yet to begin. Issues were framed in January 2019 whereas Application Exhibit 53 came to be filed in August 2019. The said delay, however, is explainable from the fact that Plaintiff is suffering life imprisonment. In Application Exhibit 53, he specifically states about having noticed the fact of non-inclusion of certain properties while he was on parole. In the facts of the case, delay cannot be considered as the impediment in allowing the Application. There is specific pleading of

the Plaintiff that the properties sought to be added are joint family properties. This pleading is sufficient to allow amendment as it is open for the Defendants to oppose the same by filing written statement so also to substantiate the same during trial. At this stage, Trial Court was not required to go into the correctness of the said submission of Plaintiff.

7. However, insofar as adding tenants as Defendants is concerned, the Trial Court ought to have taken into account the nature of the suit and the relief claimed therein. There is no dispute about the fact that the suit is for partition and separate possession. Any decree passed in such suit would not affect the rights of tenant in any manner whatsoever. In the judgment cited supra, the issue before this Court was as to whether the persons against whom a relief is sought challenging the agreements of sale executed in their favour were necessary party or not. Having regard to the difference in facts involved in both cases, in considered view of this Court, said judgment has no application to the present case.

8. As a result of above discussion, Petition stands partly allowed. Application Exhibit 53 is partly allowed to the extent of

amendment to the pleadings in the plaint and stands rejected for joining tenants as party Defendants. Needless to say that the rights of the parties to receive share and rent, if any, would not get affected by rejection of Application Exhibit 53.

(R. M. JOSHI)
Judge

dyb