



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

WRIT PETITION NO. 11292 OF 2022

Anil Bhujangrao Kulkarni And Others
VERSUS
Vitthal Raosaheb Holambe And Others

Mr. S. S. Gangakhedkar, Advocate for petitioner
Mr. A. A. Phad, Advocate for respondent No. 1 to 5, 6-1, 7 & 8.

CORAM : R. M. JOSHI, J.
DATE : 03rd January, 2025

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. Petitioner-plaintiff in RCS No. 34/2013 is aggrieved by rejection of application Exhibit 135 filed under Order VI Rule 17 and Order I Rule 10 of Code of Civil Procedure (for short "**CPC**") for amendment in plaint and in adding Samabai as defendant.
3. It is a case of petitioner that the suit filed by him is for declaration of ownership of the suit property and recovery of the possession. On the basis of an order passed by the trial Court, measurement of the suit property was effected in the year 2020 however, report was not submitted till 23.02.2022. It is the contention of the learned counsel for the petitioner that the report dated 23.02.2022

was filed in the Court and say to the same was filed on 20.02.2022. It is his submission that at this point of time, it was revealed to the plaintiff that the area admeasuring 60R is in the possession of Raosaheb Holambe and Samabai Holambe. Since now Raosaheb is deceased, he sought inclusion of Samabai as a defendant. He submits that it is justified for the plaintiff to amend the plaint by incorporating the pleadings to the effect that property is held by Raosaheb and Samabai but in fact it is clarified by their son (defendant No. 1). Thus, it is his contention that the amendment is sought on the basis of subsequent event and as such the trial Court was not justified in rejecting the same.

4. Learned counsel for the respondent/original defendant opposes the petition and support the impugned order. It is his submission that the application has been filed belatedly and after evidence of both sides, there cannot be any dispute with regard to the possession of land. After commencement of trial, parties seeking amendment to the pleadings is required to show due diligence however that does not preclude the party from carrying out amendment to the pleadings on the basis of subsequent event.

5. Here in this case, record indicates that the report of measurement was submitted on 23.02.2022 and for the first time. It was revealed to the plaintiff about the area admeasuring 60 R to be in

possession of Raosaheb and Samabai. It is thus not the case that there was any delay or latches on the part of the petitioner/plaintiff for seeking amendment, since as admittedly, the application for amendment is filed on 19.03.2022.

6. This Court also finds substance in the contention of the counsel for the petitioner that even in case the suit is decreed, it cannot be executed against Samabai, if she is not added as a party defendant. The amendment to the pleadings is sought to the effect that though on record the property is ought to have been in possession of Samabai and Raosaheb, the same is cultivated by defendant No. 1 Vitthal. In the peculiar facts of the case, learned trial Court was not justified in rejecting the application solely on the ground of the stage at which it was filed.

6. Since, the amendment is relevant for just decision of the case and since there is no apparent delay on the part of the plaintiff in seeking the amendment, at this stage, petition stands allowed. Impugned order is set aside. Application Exhibit 135 stands allowed. Amendment be carried out within a period of 2 weeks from today before the trial Court.

(R. M. JOSHI, J.)

bsj