



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

52 WRIT PETITION NO. 14030 OF 2023

VIJAYA DHANANJAY PATIL AND OTHERS
VERSUS
SANJAY GOVERDHAN PATIL AND ANOTHER

Mr.R.S. Kasar, Advocate for the petitioners.

Mr.Umesh Mitkari h/f. Mr. P.U. Gujrathi, Advocate for respondent No.1.

CORAM : KISHORE C. SANT, J.
DATE : 28.03.2025

PC :-

01. Heard learned Advocates for the parties for some time. The petitioners/original plaintiffs have come to this Court challenging an order of rejection of application seeking amendment to the plaint. By way of the amendment, the petitioners want to add one of the coparceners as party to the suit.

02. The petitioners filed a suit for partition and separate possession. Before framing of the issues, the petitioners have filed an application stating that the brother-in-law of the petitioner No.1 and uncle of petitioner Nos. 2 to 4 is not added as a party. The property in his possession is also not added. It is therefore necessary to add Vijay Govardhan Patil as a party. The properties were also shown in the application. The learned Judge rejected the application mainly on the ground that there are no sufficient averments made in the application to be inserted in the plaint. The property stands in the name of proposed defendant is also not shown and rejected the application. The petitioners have, therefore, approached this Court.

03. The learned Advocate for the petitioners vehemently argued that in-fact in the application itself all the properties standing in the name of proposed defendant are stated. There is specific averment that inadvertently proposed defendant is not added while filing the suit. About relations, there is no dispute. The Court rejected the application only on technical ground. The issues were not framed when the application was filed. He, thus, prays for allowing the petition by quashing and setting aside the order.

04. The learned Advocate for the respondents opposes the petition. He submits that the Court has rightly passed the order. The petitioners themselves, in the plaint, have shown only present defendant to be successors of original owner Govardhan Gangaram. The name of present defendant is not shown. The order was passed on 18.11.2022. The petitioners, however, filed petition on 13.10.2023, only with intention to protract the litigation. The application lacks bona fides and prays for rejection of the petition.

05. Heard learned Advocates for the parties. This Court has gone through the impugned order. From the application it is seen that there is sufficient averment as to why proposed defendant is necessary party. The properties are also described in the application. It is trite law that the amendment should be liberally allowed, prior to commencement of the trial, when it is not bringing fresh cause of action and is not changing the nature of the suit. In the present case, this Court finds that no fresh cause of action arises, which is barred by limitation. The nature of the

suit also shall remain the same. The application was filed prior to framing of the issues. Considering all the above, this Court finds that the application ought to have been allowed by the Trial Court. Hence, the following order :-

06. The writ petition is allowed. The order dated 18.11.2022 is quashed and set aside. The application Exh.30 in RCS No. 122 of 2022 pending before the learned Civil Judge, Senior Division, Ahmednagar stands allowed, subject to costs of Rs.5000/- (Rupees Five Thousand) to be paid to each of the respondents, since the petitioners have approached after delay.

[KISHORE C. SANT, J.]