

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3419 OF 2024**

Ramchandra Pandurang Mhaske & Ors ..Petitioners

Versus

Dadu Pandurang Mhaske Decd Through LRs & ...Respondents
Ors

Mr. Vishwajit N. Sagare, for the Petitioner.

Mr. Nikhil Wadikar, i/b Nandu Pawar, for Respondent No.2.

CORAM: N. J. JAMADAR, J.

DATED : 12th MARCH 2025

ORAL JUDGMENT:

1. Rule
2. Rule made returnable forthwith and with the consent of the Counsel for the parties heard finally.
3. The challenge in this Petition is to an order dated 1st April 2024 passed by the learned Civil Judge, Senior Division, Satara, whereby an application preferred by the petitioners-plaintiffs for amendment in the prayer clause of the Plaint so as to seek relief of partition and separate possession of their share in the property in addition to the prayer of declaration of 1/4 share in the joint family properties, came to be rejected.

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4. The petitioners have instituted a suit for declaration that the plaintiffs and defendant no.1 have 1/4 share in the joint family properties and the Sale Deed dated 9th November 1995 executed by defendant no. 1 in favour of defendant no.2 who is the daughter of defendant no.1 is not binding on the share of the plaintiffs. In the said suit, defendant nos. 4 to 6 appeared. In addition to the Written Statement, defendant nos. 4 to 6 have filed counter claim and prayed for the partition of the suit properties, and that the Sale Deed executed by the defendant no.1 in favour of defendant no.2 is not binding on defendant nos. 4 to 6.

5. It appears that, at the stage of the final argument, especially after the recast of issues to the effect as to whether the Suit for mere declaration is maintainable in the present form, the plaintiffs have filed application seeking amendment in the Plaint so as to incorporate the prayer of partition and separate possession.

6. The application was resisted.

7. By the impugned order dated 1st January 2024, the learned Civil Judge, Senior Division, Satara was persuaded to reject the application observing *inter alia* that in a Suit for partition all the co-shares are the plaintiffs and since defendant nos. 3 to 6 have already claimed partition by way of a Counter Claim, it was not necessary to amend the Plaint. The question as to whether the Suit for declaration simplicitor, without

seeking the relief of partition, was maintainable, was a question of law and could be decided at the trial.

8. The learned Counsel for the petitioners submitted that the proposed amendment is essentially ancillary in nature and would assist the Court in deciding all questions in controversy, finally and completely. The learned Civil Judge has taken a hyper-technical view of the matter. The plaintiffs do not intend to protract the trial. It was submitted that, in the event the amendment is allowed the plaintiff would not lead further evidence.

9. Mr. Wadikar the learned Counsel for respondent-defendant no.2, resisted the prayer.

10. Mr. Wadikar submitted that the Counter Claim filed on behalf defendant nos. 3 to 6 contains a specific prayer for partition. In that view of the matter, the learned Civil Judge was justified in rejecting the application as the proposed amendment was superfluous. It was further submitted that the intent of the plaintiffs was to further delay the disposal of the Suit.

11. I have perused the material on record. Evidently, the application was filed at the fag end of the trial. Nonetheless, the substance of the matter cannot be lost sight of. In prayer clause (b), the plaintiffs have sought a specific declaration that the plaintiffs and defendant no.1 had 1/4 share each in the suit properties. The suit has been instituted on the

premise that the suit properties are the joint family properties and are liable for partition.

12. It is true that plaintiffs could have sought the amendment at an earlier point of time. However, the necessity of the amendment cannot be questioned. The proposed amendment is necessary for the determination of all the questions in controversy between the parties, once and for all. The addition of the prayer for partition, even at the stage of final argument, would not change the nature and character of the suit nor it causes irretrievable prejudice to the defendants.

13. I am, therefore, inclined to allow the Petition.

14. At the same time, the statement made on behalf of the plaintiffs that the plaintiffs would not lead further evidence, post the amendment, is accepted.

15. Hence the following order:

: O R D E R :

- (i) The petition stands allowed.
- (ii) The order dated 1st January 2024 stands quashed and set aside.
- (iii) The application for amendment (Exhibit “148”) stands allowed. Necessary amendment in the Plaint be carried out within a period of two weeks from the date of uploading of this order.

(iv) The statement made on behalf of the plaintiffs-petitioners that the plaintiffs would not lead further evidence in the suit, is accepted.

(v) The learned Civil Judge is requested to make an endeavour to hear and decide the Suit as expeditiously as possible. None of the parties shall seek unnecessary adjournments.

(v) Rule is made absolute in the abovesaid terms.

No costs.

[N. J. JAMADAR, J.]