



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3619 OF 2025**

Wasim Jamaluddin Shaikh and Ors. ... Petitioners
versus
Balu Dagdu Pacharne and Ors. ... Respondents

Mr. Veerdhaval Kakade, for Petitioners.

CORAM: N.J.JAMADAR, J.

DATE : 12 MARCH 2025

P.C.

1. Heard the learned Counsel for the Petitioners.
2. Office report indicates that Respondent No.1 has been duly served.
3. None appears for Respondent No.1.
4. The challenge in this Petition is to an order dated 4 March 2024 passed by the learned Civil Judge, Jr.Division, Ghodnadi-Shirur, Pune, whereby the application preferred by the Respondents – Plaintiffs for amendment in the plaint so as to incorporate a plea of right of pre-emption, came to be allowed.
5. The Plaintiff has instituted the suit for partition and separate possession of the suit property. In the said suit, the Plaintiff had also sought a declaratory relief to the effect that the Sale Deeds executed by the co-sharers in favour of Defendant Nos.20, 21 and 22 (the Petitioners herein), are not binding on the Plaintiff and the consequential relief of perpetual injunction. In fact, the suit was instituted on 6 December 2022. Co-sharers had executed the Sale

Deed in favour of Defendant No.20 – Petitioner No.1, on 28 January 2022; Defendant No.21 i.e. Petitioner No.2, on 17 November 2022; and Defendant No.22 – Petitioner No.3, on 28 November 2022.

6. Post appearance of the Defendants and the written statement, the Plaintiff filed an application for amendment in the plaint asserting that the co-sharers – defendants have transferred their interest in the suit properties by executing various instruments in favour of the transferees during the pendency of the suit. It was, therefore, necessary to amend the plaint so as to incorporate a prayer for asserting the right of pre-emption.

7. The application was resisted on behalf of the Defendants.

8. Learned Counsel for the Petitioners submitted that the Trial Court could not have allowed the amendment as it would change the nature of the suit completely. The Plaintiff had knowledge about the transfer of interest of the co-sharers much before the institution of the suit. Assertion in the application for amendment that, during the pendency of the suit, co-sharers have transferred their interest in the suit properties was demonstrably incorrect. In any event, a suit for partition cannot be converted into a suit for pre-emption. To buttress this submission, learned Counsel for the Petitioners placed reliance on an order passed by this Court in the case of Tulshiram Anna Suryavanshi and Anr. V/s. Sadashiv Shripati Suryawanshi and Ors.¹

1 WP No.9088 of 2005 dt. 10 February 2006

9. Evidently, the application for amendment in the plaint was filed at a pre-trial stage and under one year from the institution of the suit. Therefore, the interdict contained in the proviso to Order VI Rule 17 has no application. The question that arises for consideration is whether the proposed amendment is necessary for determination of the real question in controversy between the parties.

10. The proposed amendment, in my considered view, would be essential to determine the real question in controversy between the parties as the status of the Petitioners is to that of a stranger purchaser. Whether the Plaintiff is entitled to urge a right of pre-emption is a matter for adjudication at the trial. Since the portions of the suit property have allegedly been transferred to the Petitioners by the co-sharers, prima facie, there does not seem to be any impediment in asserting the right of pre-emption. At any rate, these questions would be required to be adjudicated at the trial.

11. In this view of the matter, the learned Civil Judge has not committed any error in allowing the application for amendment. The Petitioners-Defendants will have adequate opportunity to resist the assertion of the Plaintiff, incorporated by way of amendment, by filing additional written statement. The Writ Petition, thus, does not deserve to be entertained.

12. The Writ Petition stands dismissed.

(N.J.JAMADAR, J.)