



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4058 OF 2025**

Kiran Shankar Gaikwad	...	Petitioner
versus		
Balasaheb Sitaram Khule and Ors.	...	Respondent

Mr. Sukumar Ghanavat, for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 2 APRIL 2025

P.C.

1. Heard the learned Counsel for the Petitioner.
2. The challenge in this Petition is to an order dated 18 February 2025 passed by the learned Civil Judge, Jr. Division, Kavathemahankal, whereby the application for amendment in the plaint (Exh. 129) so as to implead the daughters of Savalaram, who were not impleaded as party Defendants to the suit, and also include certain properties, in respect of which a defence was raised on behalf of the Defendants that those joint family properties were not included in the common common hotchpotch, were sought to be added.
3. The learned Civil Judge was of the view that since the suit was for partition and separate possession of the joint family properties, the proposed defendants who are daughters of Savalaram, were the necessary parties to the suit as in their absence no effective decree could be passed. Likewise, the properties which were sought to be added by way of amendment were

stated to be the joint family properties and a defence was raised in respect of those properties that the suit was not maintainable on account of non-inclusion of those properties. Therefore, the proposed amendment was essentially consequential in nature and did not cause any prejudice to the Defendants.

4. Learned Counsel for the Petitioner would urge that the proposed amendment causes prejudice to the Defendants as the Defendants have raised specific defences of non-joinder of necessary parties and non-inclusion of joint family properties, in the common hotchpotch. Therefore, the proposed amendment, at a belated stage; after the evidence of the Plaintiffs has been recorded, causes grave prejudice to the Defendants.

5. I am unable to persuade myself to agree with the submissions of the learned Counsel for the Petitioner. The nature of the suit cannot be lost sight of. The suit is one for partition and separate possession of the joint family properties. It is trite, all the persons who are entitled to a share in the event of partition are required to be impleaded as parties to the suit for partition and in the absence of such co-sharers, no effective decree can be passed. Likewise, inclusion of all the properties which are susceptible to partition is necessary in a suit for partition and separate possession of the joint family properties. Therefore, the proposed amendment, which seeks to add the necessary parties and also include the properties which are stated to be the

joint family properties in the common hotchpotch appears to be necessary for the determination of all the questions in controversy between the parties, for once and all. In the circumstances of this case, the proviso to Rule 17 of Order 6 does not preclude the Court from granting the amendment as it is essentially consequential to the stand taken by the Defendants. Therefore, this Court does not find any justifiable reason to entertain the Petition in exercise of the supervisory jurisdiction.

6. The Writ Petition stands dismissed.

(N.J.JAMADAR, J.)