



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6266 OF 2022

PETITIONER

(Original Plaintiff)

:-

Aatmaram s/o Gopala Wandhare (expired on 2/9/2-018), through its legal heir, Shri. Abhay s/o Ashok Wandhare, aged about 39 years, occupation labourer, R/o Shashtri Ward, Hinganghat, Tahsil Hinganghat and District – Wardha,

..VERSUS..

RESPONDENTS

(Original Defendant No.1)

:-

1) Ramdas s/o Gopala Wandhare, aged about 64 years, occupation – cultivator, R/o Wadner, Tahsil Hinganghat, and District – Wardha.

(Original Defendant No.2)

2) Ashok @ Adhika s/o Gopala Wandhare aged about 64 years, occupation- cultivator, R/o Shashtri Ward, Hinganghat, Tahsil Hinganghat, and District-Wardha,

Mr.S.S. Joshi, Advocate for Petitioner.

Mr R.A. Bhandarkar, Advocate for Respondent No.1.

Mr N.M. Raut, Advocate for Respondent No.2.

CORAM : ROHIT W. JOSHI, J.

DATE : 20/11/2025

ORAL JUDGMENT :

1. Heard.

2. The application for amendment of the plaint filed by the present petitioner in Regular Civil Suit No.144 of 2018, vide Exh.19, came to be rejected vide order dated 07.09.2021, which is subject matter of challenge in the present petition.

3. The original plaintiff/Aatmaram Wandhare, had filed a suit for partition and separate possession against his brother. He died without leaving behind any Class-I legal heir. The present petitioner is the son of defendant No.2, who is the brother of the plaintiff. The petitioner filed an application for impleading himself as legal representative of the deceased plaintiff on record, which is allowed by the learned trial Court. The petitioner has thereafter moved an application for amendment of the plaint in view of the Will executed in his favour by the original plaintiff. By virtue of this amendment, he sought a declaration of ownership on the basis of said Will. The application is filed at Exh.19, came to be rejected by the impugned order on the ground that if the amendment is allowed, the nature of the suit will be altered.

4. It is not in dispute that the trial of the suit is yet to commence. Likewise, it is also not in dispute that the Will

purportedly executed in favour of the petitioner pertains to the property which is the subject matter of the suit for partition.

5. In a suit for partition, often the situation is fluid. As and when some person dies, the dynamics of the suit change. Such an event has occurred in the present matter as well. It is always desirable that the entire controversy pertaining to partition of the joint property be decided in the same suit. The present suit is a suit for partition and separate possession and the issue pertaining to the Will has arisen only because of death of the original plaintiff. It needs to be mentioned that the issue pertaining to the Will is already framed by the learned trial Court.

6. In view of the above, in the considered opinion of this Court, the conclusion is drawn by the learned trial Court that the nature of the suit will be altered by allowing the amendment is not correct. The application for amendment therefore deserves to be allowed. Writ Petition is allowed in the following terms :-

- i) Writ petition is **allowed**.
- ii) The order dated 07.09.2021, passed by the learned Jt.

Civil Judge (Jr. Dn.), Hinganghat, on application at Exh.19, in Regular Civil Suit No.144 of 2018, is quashed and set aside and the said application for amendment of claim at Exh.19, is **allowed**.

iii) Parties to bear their own costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate