



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

Writ Petition No.5022 of 2024
Kisan s/o Barkya Gawai Vs. Smt. Usha Siddharth Khandare and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Ram Karode, Advocate for the petitioner.
Mr. A.M. Tirukh, Advocate for respondent no.1.
None for respondent nos. 2 to 6.

CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 07/10/2025.

1. Heard Mr. Ram Karode, learned counsel for petitioner and Mr. A.M. Tirukh, learned counsel for respondent no.1. None appeared for respondent nos. 2 to 6.

2. By way of the present petition, the petitioner has challenged the order dated 14.03.2024 passed below Exhibit 56 by the learned Civil Judge, Junior Division, Murtizapur, in Regular Civil Suit No.20/2016, whereby the application for amendment filed by the plaintiff has been allowed.

3. The Mr. Ram Karode, learned counsel for the petitioner (Original defendant no.2) assailed the order passed by the learned Trial Court on the ground that the application was filed to fill up the lacunae in the plaintiff's case. He is submitted that the defendants had already filed their written statement raising a specific contention that a particular property was not included as ancestral property. The suit thereafter proceeded on that basis, both parties have led their evidence, and the matter is now fixed for final arguments. It is therefore contended that at such a belated stage, the Trial Court ought not to have entertained and allowed the application for amendment.

4. Per contra, Mr. A.M. Tirukhth, learned counsel for the respondent no.1 (Original plaintiff) contended that the amendment is sought to avoid multiplicity of litigation. It is submitted that the suit is for partition and separate possession and the proposed amendment does not change the nature of suit. He further contended that the learned Trial Court has duly considered all relevant aspects, and more particularly, mentioning the property which was not included in the suit property does not amount to filling of a lacunae. Hence, he prayed for dismissal of the present petition.

5. I have considered all the submissions by learned counsel for the respective parties.

6. In view of the fact that the parties have already led their evidence and the matter is fixed for final hearing and therefore, granting the amendment at this stage would amount to reopening the entire issue. More particularly, when there is a specific averment in the written statement that the particular property is not included in the suit property and thus the amendment cannot be permitted under the guise of curing a lacuna. On that count, I am inclined to interfere with the order passed by the Trial Court. Hence, the writ petition is allowed.

7. Hence, the order passed by the learned Joint Civil Judge Junior Division Murtizapur below Exhibit 56 in Regular Civil Suit No.20/2016 is quashed and set aside. There shall be no order as to costs.

(Siddheshwar S. Thombre, J)