

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2586 OF 2015

Jivan Pandurangrao Yerolkar ..PETITIONER

VERSUS

Udhav Pandurangrao Yerolkar
Patil & ors. ..RESPONDENTS

Mr V.D. Gunale, Advocate for petitioner;
Mr Dhananjay Deshpande, Advocate for respondent no.1;
Mr N.S. Patil, Advocate for respondents no.2, 3 & 5;
Mr V.G. Kodale, Advocate for respondent no.4

CORAM : N.W. SAMBRE, J.

DATE : 18th November, 2015

ORAL ORDER :

The petition is by the defendant to a suit for partition, bearing R.C.S. No.33 of 2012, questioning the legality and validity of the order dated 27th January, 2015, passed by Civil Judge Junior Division, Chakur, below Exh.105, thereby rejecting prayer for amendment of written statement.

2. Mr Gunale, learned Counsel appearing on behalf of the petitioner, while questioning rejection of the prayer for grant of amendment to the written statement, would urge that the court should be liberal in granting amendment to the written statement. According to him, if the amendment as prayed for is granted, no prejudice will be caused to respondent no.1 – plaintiff.

(2)

3. While countering the above submissions, Mr Deshpande, learned Counsel appearing on behalf of respondent no.1 – plaintiff would urge that recording of evidence in the suit for partition has already commenced. During the cross-examination of the plaintiff, the petitioner having realized that theory of gift deed is set up by him and not that of already effected partition of the suit properties, hence, the application for amendment is moved. According to him, the same is by way of afterthought, so as to frustrate the claim in the suit.

4. Having considered rival submissions, it is required to be noted that the petitioner-defendant no.3, in the written statement in categorical terms has come out with a defence of gift deed. He has not only mentioned about the same but has also elaborated in detail as regards execution of the gift deed.

5. It is only after recording of evidence in the matter has commenced, petitioner - defendant no.3 has come out with a case of alleged partition deed. In my opinion, once the suit has gained progress as regards recording of evidence and plaintiff has already entered into the witness box and his cross-examination was going on, in my opinion, it will be inappropriate on the part of the present petitioner to move application for amendment, at such belated stage, that too taking contrary defence to the one which is already set up in the written statement.

6. In that view of the matter, the petition fails and stands rejected with no order as to costs.

(3)

7. In compliance with the order passed by this Court on 11th March, 2015, the petitioner has deposited an amount of Rs.10,000/- in the Trial Court. The petitioner is at liberty to withdraw the said amount.

(N.W. SAMBRE, J.)

amj