

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9649 OF 2014

Damodhar Dashrath Kute and others

PETITIONERS

VERSUS

Rambhau Gitaram Kute and others

RESPONDENTS

Mr.V.P.Latange, Advocate for the petitioners.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 05/01/2015

PER COURT :

1. The petitioners are the original plaintiffs, who have preferred RCS No.589/2004 for seeking partition and separate possession in relation to an ancestral property. The application Exh.119 seeking an amendment under Order 6 Rule 17 of the CPC has been rejected by the impugned order dated 17/09/2014.

2. Grievance of the petitioners is that by the proposed paragraphs in application Exh.119, the petitioners desire to explain certain aspects in relation to portions of the house property which are being enjoyed by the brothers. If the proposed amendment is not brought on record, the Trial Court would not be assisted in the proper adjudication of the suit.

3. It is conceded that recording of evidence was over on 13/08/2012. Final arguments were advanced on 24/08/2012. Thereafter a purshis was filed below Exhs.82 and 83, by which issues were recast. The parties finally argued the matter again on 18/08/2014 and the suit was closed for judgment. Application Exh.119 has been filed on 18/02/2014.

4. The petitioners rely upon the judgment of the Apex Court in the case of Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others, (2009) 10 SCC 84 to support their contention that since the petitioners are not seeking further prayers against the defendants, the amendment could be allowed by imposing costs. The petitioners concede that the aspects sought to be brought on record through the proposed amendment is not in connection with the subsequent events that may have occurred pursuant to the institution of the suit.

5. Having heard the learned Advocate for the petitioners, I have gone through the petition paper book and the impugned order with his assistance. The Trial Court has specifically dealt with the issue of due diligence in relation to application Exh.119 seeking an amendment.

6. It is concluded that the petitioners have not brought on record any such circumstances, which could establish that despite due diligence, the petitioners were handicapped or precluded from seeking an amendment to the plaint. Evidence having been recorded on 13/08/2012, that the Trial Court has observed that the petitioners have also advanced their final submissions and thereafter application Exh.119 has been filed. The contention of the petitioners is that the proposed amendment is only by way of an explanation and is neither by way of any specific averment nor do they intend to lead evidence.

7. The petitioners submit that the proposed amendment is only to bring to the notice of the Trial Court by way of an explanation as regards the enjoyment of a particular property by the brothers, who are parties to the suit.

8. The Trial Court has considered the scope and ambit of Order 6 Rule 17 and the proviso thereunder. The Trial Court has also concluded that the explanation that is sought to be put forth by the petitioners is not going to assist the Court in the adjudication of the main issue.

9. In my view, introduction of the proviso to Rule 17 in 2002 restricts a litigant from seeking an amendment when the matter is reserved for judgment and that too by way of introducing an explanation as regards enjoyment of properties when no further evidence to prove the said aspect is sought by the petitioners.

10. Even before this Court, the petitioners contend that they do not intend to lead any further evidence pursuant to the proposed amendment. In my view, such explanation is argumentative in nature. The matter having been reserved for judgment and the proposed amendment being argumentative in nature, I do not find any merit in the petition.

11. For these reasons, the judgment of the Apex Court in the case of Revajeetu Builders and Developers (supra) would not assist the petitioners.

12. In the light of the above, the petition, being devoid of merits, is dismissed.

(RAVINDRA V. GHUGE, J.)

