

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

WRIT PETITION NO. 534 OF 2015

Smt. Nilma Arun Joshi
& another

... Petitioners

Versus

Smt. Kumudini Balkrushna Joshi
& others

... Respondents

.....
Mr. A.V. Patil, Advocate holding for
Mr. A.K. Gawali, Advocate for petitioner

.....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 30th JANUARY , 2015

PER COURT :

1. The petitioners are aggrieved by the order passed by the Trial Court below Exhibit 81 dated 22-09-2014.
2. The suit instituted by the petitioners is for partition and separate possession. Amendment to the plaint was allowed below Exhibit 55 and Exhibit 62 in the past. Recording of evidence has still not commenced.
3. The respondents / defendants have filed their written statement on 21-02-2011 and certain categoric statements have been made in paragraph Nos. 2 and 4 in the written statement.

By application Exhibit 81, an opposite stand is taken by the defendants, for seeking amendment to the written statement on the ground that documents which are more than seventy five years old have come to the notice of the defendants and, therefore, addition of paragraph Nos. 6-A, 7-A, and 8-A to the written statement.

4. The petitioners, therefore, submits that the said documents must have been within the knowledge of the defendants and they desire to delay the proceedings by filing such applications. The impugned order is cryptic in nature and is unsustainable.

5. Having heard the learned Advocate for the petitioners and having going through the petition paper book, I find that the impugned order, though sustainable, is cryptic in nature. When application for amendment to a plaint or to a written statement, is seriously opposed by the other side, it is expected that a Court should apply its mind and assign reasons to its order.

6. The impugned order dated 22-09-2014 reads as under :-

“ The documents on which basis amendment is sought are more than seventy five years old, therefore, might have not within the knowledge. Therefore, application is allowed and defendants permit to amend their pleadings.”

It is therefore, expected that a reasoned order should be passed while dealing with an application filed by the parties.

7. It is informed that the litigating parties are of advanced age. Since recording of evidence is yet to commence, I do not intend to interfere with the impugned order in the light of the contentions set out in application Exhibit 81. Needless to state, defendants have to prove the documents and their claim pursuant to the amendment made by them.

8. The Regular Civil Suit was instituted in 2010. Two defendants are already 80 years old, another two defendants are 70 years of age and two plaintiffs have already crossed 60 years. In the light of these facts, the Trial Court is directed to decide R.C.S. No. 250 of 2010 as expeditiously as possible and preferably on or before the 31st day of December, 2015 looking at the advanced age of the litigating parties.

9. The Writ Petition is, therefore, disposed off with the above directions.

(**RAVINDRA V. GHUGE, J.**)