

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1099 OF 2015

OSMAN ABDUL RAZAK AND OTHERS
VERSUS
SULEMAN ABDUL RASHID AND OTHERS

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Advocate for Petitioners : Shri Garud N.C.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 10, 2015

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PER COURT :-

1. The petitioners are aggrieved by the impugned order of amendment, dated 9.11.2014, passed by the trial Court in RCS No.430 of 2013.
2. The petitioners are the original defendants. A death certificate of Abdul Rashid s/o Haji Mirabaksh indicating date of death as 15.5.1964 and place of death as Ajmer, has been placed on record. The petitioners have contended in their Written Statement as regards the death of Abdul Rashid. Based on the same, the petitioners have contended that by the passing away of Abdul Rashid prior to the passing away of Haji Mirabaksh and that would dis-entitle the plaintiffs from seeking any share in the property under the Mohammedan Law.
3. By the application Exhibit 47, filed on 25.8.2013, which is within one year from the date of institution of the suit, the plaintiffs pray that a correction be permitted in paragraph No.5 on page No.5 of the plaint stating that the grand-father of the plaintiffs Haji Mirabaksh Rangarej has

passed away on 22.12.1970 and father of the plaintiffs Abdul Rashid, who is son of Haji Mirabaksh has passed on 2.5.1977.

4. This amendment has been permitted much to the grievance of the petitioners who submit that the said statement is diagonally opposite to an affidavit filed by Mohd. Suleman, who is son of Abdul Rashid, that his father Abdul Rashid had died on 15.5.1964. So also the proposed amendment was in opposition to the death certificate issued by the Municipal Corporation, Ajmer, indicating the actual date of death of Abdul Rashid.

5. The petitioners, therefore, submit that a false statement is being sought to be made through the amendment and the impugned order, therefore, deserves to be rejected.

6. Having considered the submissions of the learned Advocate for the petitioners and having gone through the impugned order, I find that the trial Court has rightly not entered into the merits of the proposed amendment. Eventually, the plaintiffs will have to establish that Abdul Rashid has passed away after the death of his father Haji Mirabaksh.

7. When the petitioners are equipped with enough material to be brought on record for establishing the date of death of Abdul Rashid as being 15.5.1964, the suit would, therefore, suffer its consequences. As such, merely by permitting the plaintiffs to mention a new date of death would not automatically render the suit maintainable as is the apprehension

of the petitioners.

8. The trial Court has observed in the impugned order that the petitioners can file their additional written statement and refute the date of death of Abdul Rashid. In my view, ultimately the trial Court will have to decide the suit, based on the evidence brought before it. The trial Court has rightly not prejudged the issue, since the affidavit of Mohd. Suleman as well as the death certificate issued by the Municipal Corporation of Ajmer will have to be proved before the trial Court in RCS No. 430 of 2013. Then alone could the trial Court be in a position to decide the real controversy.

9. I, therefore, do not find that the impugned order would be termed as perverse or erroneous. The petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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