

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6698 OF 2014

Prabhakar Vitthal Bidye & Ors. .. Petitioners
vs.
Dipak Ramchandra Belwalkar & Ors. .. Respondents

Mr. Anil P. Bagwe for Petitioners.
Mr. P. D. Prasad Rao for Respondent Nos. 2 to 10.

CORAM : M. S. SONAK, J.
DATE: 05 MAY 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] This petition challenges order dated 15 March 2014 by which the petitioners application seeking leave to amend the written statement came to be rejected.

3] The petitioners, are the original defendant nos. 2 to 7 in the suit. The only amendment applied for by the petitioners is seeking to substitute the expression 'by partition deed' with '*by memorandum of partition*'. The amendment was applied for, soon after the filing of the written statement. Issues are yet to be cast and consequently the trial is yet to commence.

4] The learned counsel for the respondent nos. 2 to 10 however defended the impugned order by submitting that there is substantial difference between a partition deed and a memorandum of partition, particularly in the matter of payment of stamp duty. If the amendment is applied for is permitted, then prejudice will occasion the plaintiff, particularly since the plaintiff has prayed for declaration that the said document is not enforceable.

5] There is no question of any prejudice to the plaintiff, merely on account of the amendment to written statement of the nature applied for, is allowed. Ultimately, the nomenclature of document, is not really of serious relevance. In determining whether the document in question is a partition deed or a memorandum of partition, the Civil Court, will have to advert to the contents thereof. In any case, at the stage of deciding whether leave to amend ought to be granted, there is no question of adverting to such issues.

6] Accordingly, there was no justification in disallowing the amendment. In matters of amendment to written statement, a liberal approach is warranted. Besides, as noted earlier, the amendment was applied for much prior to commencement of the trial.

7] The impugned order is set aside. The petitioners are granted leave to amend the written statement as proposed. Such amendment to be carried out within a period of six weeks from today.

8] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

9] All concerned to act on basis of an authenticated copy of this order.

(M. S. SONAK, J.)

Chandka