

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3715 OF 2008

Maruti Appa Barkale,
since deceased, through his LRs.

Hirabai M. Barkale & Ors.

.. Petitioners

VS.

Dnyandeo A. Barkale & Ors.

.. Respondents

Mr. R. Deodhar i/b. Mr. S. M. Kamble for Petitioners.

None for Respondents.

CORAM : M. S. SONAK, J.

DATE: 29 APRIL 2015

P.C. :-

1] This Petition challenges order dated 25 March 2008, by which the learned Civil Judge, Junior Division, Gargoti, has declined the petitioners application seeking leave to amend the written statement.

2] The records indicate that application for amendment was made after the commencement of the trial. However, looking to the amendment proposed and the explanation furnished, it cannot be said that there was total lack of diligence on the part of the petitioners in seeking leave to amend. In any case the lack of diligence in the present case, was not of said degree as would disentitle them to seek leave to amend the written statement upon payment of costs.

3] The amendment proposed is basically to indicate that the suit property no. 3 was also having the number R.S. No. 53 and Gat No. 279. The amendment further proposed to state that the present area of the property is 60 R.

4] The impugned order in fact records that the learned counsel for the plaintiff had stated that he had no objection to state that property no. 3 was having R.S. No. 53, but he objected that it is not necessary to mention, at this stage, this particular sentence in the written statement.

5] In the light of the aforesaid, and looking to the proposed amendment in a suit which is for partition, interests of justice would be met if the proposed amendment is permitted subject to the petitioners paying costs of Rs.10,000/- (Rupees Ten Thousand) to the plaintiff in the suit.

6] Accordingly, the impugned order dated 25 March 2008 is set aside. The petitioners are permitted to amend the written statement subject to deposits of costs of Rs.10,000/- (Rupees Ten Thousand) in the trial Court within a period of four weeks from today. If the costs are deposited within a period of four weeks from today, the

petitioners be permitted within a period of one week from the date of the deposit of the costs, to carry out the necessary amendment in the written statement. In case the costs are not deposited, this petition shall be deemed to have been dismissed and there shall be no leave for the petitioners to carry out the amendment to the written statement.

7] Further, considering that the suit is of the year 2004, the learned Civil Judge is directed to dispose of the same as expeditiously as possible and in any case within a period of one year from today.

8] Since, there is no appearance on behalf of the respondents, the petitioners are directed to appear before the learned Civil Judge on 8 June 2015 and produce authenticated copy of this order.

9] Rule is made absolute to the aforesaid extent. There shall be no separate order as to costs in this petition.

(M. S. SONAK, J.)