

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

WRIT PETITION NO. 6303 OF 2015

Ishwarlal Gulabchand Rathod

(Died) Through L.Rs.

Unnati Nitinkumar Rathod and Others

..PETITIONERS

VERSUS

Rameshlal Gulabchand Rathod and Others

..RESPONDENTS

....

Mr. Arvind Deshmukh, Advocate for petitioners.

Mr. R.R. Mane, Advocate for Respondent No.1.

Mr. B.A. Shinde, A.G.P. for Respondent Nos. 2 and 3.

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CORAM : T.V. NALAWADE, J.

DATED : 16th DECEMBER, 2016

ORDER :

1. The petition is filed to challenge the order made on Exhibit 152 in Regular Civil Suit No. 226 of 2011 which is pending in the Court of Civil Judge, Senior Division, Parbhani. Both sides are heard.

2. The application was filed by the legal heirs of Defendant No.1 for amendment in the written statement. He had prayed for permission to make following amendments:-

“(i) to correct the year in which the parties started living separately as 1982 which is mentioned as 1988.

(ii) he wanted to mention the word 'admitted' at one place in the written statement with regard to allotment of property by Ishwarlal out of Gut No. 122 and by mistake according to him it was mentioned as 'denied'; and

(iii) he wants to mention name of Suresh as person to whom some property was allotted. This name is missing in initial written statement.”

3. The suit is filed for relief of declaration and also for possession of Gut No. 97 (old no. 60). Both parties contend that during the life time, the father allotted the property to different sons and on that basis plaintiff wants to get aforesaid relief. In view of nature of case put up by plaintiff in plaint and nature of defence taken by the defendants, it cannot be said that the aforesaid amendment will affect the decision of the suit. This is actually unnecessary amendment.

4. The learned Judge of the Trial Court has rejected the application by holding that issues are framed and evidence is also recorded. Nothing could have been achieved by making such amendments and the petitioner is trying to protract the decision of the

suit as the petitioner is in possession of the property. This Court holds that there is no possibility to interfere in the order made by the Trial Court. In the result, petition stands dismissed.

(T.V. NALAWADE, J.)

SSD