

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9000 OF 2014

SUSHILA NARHARI UDAWANT AND OTHERS
VERSUS
LATA MADHUKAR KULTHE AND OTHERS

...

Advocate for Petitioners : Shri Kasar R.S.
Advocate for Respondent 1 : Shri Gawali Amol K.
Advocate for Respondents 20 & 23 : Shri Badakh V.S.

...

CORAM : RAVINDRA V. GHUGE, J.
Dated: April 26, 2016

...

PER COURT :-

1. The petitioners seek to challenge dated 13.2.2014, delivered by the trial Court in Special Civil Suit No.176 of 2011, by which, application Exhibit 53 filed by respondent No.1 / plaintiff seeking amendment to the plaint has been allowed.

2. Learned Advocate for the petitioners has strenuously criticized the impugned order. He submits that the proviso below Order VI Rule 17 of the Civil Procedure Code ("CPC") was introduced in 2002 only to ensure that an amendment is permitted within strict parameters. It was aimed at preventing amendments after the trial in the matter has commenced.

3. He further submits that the petitioners have taken a specific stand in its Written Statement that the properties at issue were self acquired properties. They were not acquired from the joint family earnings. They are, therefore, not required to be placed in the common hotchpot in the

suit filed by respondent No.1 seeking partition and separate possession. By allowing the amendment, the nature of the suit would be changed and this cannot be permitted. He, therefore, prays that the impugned order be quashed and set aside.

4. Shri Gawali and Shri Badakh, learned Advocates appearing for respondent 1, 20 and 23 respectively, support the impugned order.

5. I have considered the submissions of the learned Advocates.

6. The suit is for partition and separate possession on the basis of the contention that the properties at issue are ancestral properties. The petitioners have put forth a contention that the properties mentioned in their written statements are self acquired properties. By the amendment sought by respondent No.1 plaintiff, it is sought to be indicated that the properties mentioned by the petitioners are not self acquired properties.

7. In the light of the above, the trial Court concluded that the issue is as to whether the said properties can be said to be ancestral properties or self acquired properties. For the purpose of dealing with such issue, the trial Court has allowed Exhibit 53, permitting respondent No.1 to amend the plaint.

8. It cannot be ignored that the recording of evidence has not commenced in the matter, when application Exhibit 53 was filed. The trial

Court, therefore, concluded that the trial in the suit has not commenced.

9. I do not find that an attempt by the plaintiff to prove that the properties mentioned by the petitioners in their Written Statement are ancestral properties and not self-acquired properties, would change the nature of the suit. So also, the amendment has been permitted, when the trial has not commenced.

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

(RAVINDRA V. GHUGE, J.)

...

akl/d