

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5009 OF 2016

Smt.Alkadevi Anandsingh Rajput & Ors. .. Petitioners

vs.

Smt.Kamal Sakharam Rajput & Anr. .. Respondents

Mr.Kuldeep U. Nikam for the petitioner

Mr.Dilip Shinde i/b Mr.Vikas M. Mali for the respondent no.1

CORAM : K. K. TATED, J.
DATE : JULY 11, 2016

PC.:

1 Not on board. At the request of Advocate for the petitioner, matter is taken on board for urgent orders.

2 Heard the learned counsel for the petitioner.

3 By this petition, under Article 227 of the Constitution of India, the Petitioners defendant nos.1 to 6 challenges the order dated 15.2.2016 passed by Civil Judge, Junior Division, Miraj below Exhibit 86 in Regular Civil Suit No.67 of 2010 rejecting petitioner's application for carrying out amendment in written statement. The Trial Court rejected the petitioner's application only on the ground that respondent

plaintiff filed their affidavit of evidence on 25.9.2015. Thereafter on 16.12.2015 order was passed for 'no cross-examination by defendant'. Being aggrieved by the order dated 15.2.2016, the defendants preferred the present Writ Petition.

4 The learned counsel for the defendant nos.1 to 6 submit that Trial Court erred in coming to the conclusion that by carrying out amendment in written statement defendant wants to bring on record new case. He submits that in the present proceeding respondents plaintiffs filed a Suit for partition and separate possession of HUF property. He submits that in paragraph 2 of the plaint, plaintiff has given genealogy of the family. He submits that plaintiff showed in paragraph 2 of the plaint that Late Anandsingh and plaintiff Kamal Sakham Rajput, were the children of Late Laxmibai. He submits that actually the suit property was self acquired property of Late Laxmibai and therefore, she made application before the Revenue Authority for showing the same in the name of Late Anandsingh. He submits that by mistake these facts were not stated in written statement. Hence defendant no.1 made application for carrying out amendment. He submits that impugned order passed by Trial Court is required to be set aside allowing the defendants to carry out amendment in written statement.

5 On the other hand, the learned counsel for the plaintiff vehemently opposed the present Writ Petition. He submits that in the present proceeding, petitioner no.1 i.e. defendant no.1 Smt. Alkadevi Anandsingh Rajput filed her written statement. He submits that other

defendants failed and neglected to file written statement. He further submits that even application for carrying out amendment in written statement was filed by defendant no.1 whereas present Writ Petition is filed by defendant no.1 to 6. On this ground only present Writ Petition is not maintainable. He further submits that matter is kept tomorrow i.e. on 12.7.2016 in the Trial Court for final arguments. He submits that at this stage, defendant has not made out any extraordinary reason for allowing them to carry out amendment in written statement. Hence, there is no substance in the present Writ Petition and same be dismissed with costs.

6 I have heard the learned counsel for the petitioner at length. There is no dispute that in the present proceeding only petitioner no.1 defendant no.1 filed her written statement. Instead of that defendant no.1 to 6 filed present Writ Petition against the impugned order passed by Trial Court. The Trial Court in paragraph 8 of the impugned order specifically recorded that plaintiff filed their affidavit of evidence and thereafter, as the defendant failed and neglected to cross-examine plaintiff's witness, court passed order 'no cross-examination on behalf of all defendants'. Apart from that, matter is kept tomorrow i.e. 12.7.2016 for final arguments. Considering these facts, I do not find any reason to interfere with the well reasoned order dated 15.2.2016 passed by the Trial Court.

7 Hence, Writ Petition is rejected.

JUDGE