

Alka Sahebrao Khirid and others	...	Petitioners
Vs.		
Nivruti Bala Khirid (decd) and others	...	Respondents

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 15, 2016

Heard Mr. Vanarse, learned Counsel for petitioners and Mr. Tapkir, learned Counsel for respondents No.2 to 4 at length. Mr. Vanarse seeks leave to delete respondents No.5 to 25 as respondents No.2 to 4 being the original plaintiffs are the only contesting respondents. Leave as prayed for is granted. Amendment shall be carried out forthwith. Rule. Mr. Tapkir waives service for respondents No.2 to 4. Having regard to the narrow controversy raised in the Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

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ground that plaintiffs have received compensation on account of acquisition of Survey No.15.

3. Mr. Vanarse submitted that the learned trial Judge has framed the issues and trial is yet to commence. Suit is for partition and separate possession. Defendants No.1 to 7 are claiming share in the compensation received on account of acquisition of Survey No.15. Plaintiffs have, however, not included Survey No.15 in the Suit for partition. He, therefore, submitted that the learned trial Judge should have allowed the application for amendment.

4. On the other hand, Mr. Tapkir supported the impugned order. He submitted that twice, defendants amended the written statement. He has taken me through the application exhibit-72 made by defendants No.1 to 7 to contend that even father of defendants No.1 to 7 received compensation on account of acquisition of Survey No.15.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that on the basis of the pleadings of the parties, the learned trial Judge has framed the issues. Plaintiffs have not adduced the evidence. In fact, in paragraph 6, the learned trial Judge has also noted that trial is not yet commenced. Plaintiffs have instituted Suit for partition. It is the case of the defendants that Survey No.15 is also family property and plaintiffs have received compensation on account of acquisition of Survey No.15. In my opinion, as the Suit is for partition and defendants claim that only plaintiffs have received compensation in respect of Survey No.15, the learned trial Judge should have allowed the application for amendment. Though the learned trial Judge has observed that the parameters for considering the application for amendment of the

plaint and the written statement are different and the applications for amendments to the written statement are to be dealt liberally, he rejected the application on the ground that the amendment proposed is not necessary. In my opinion, the learned trial Judge was not justified in holding that the proposed amendment is not necessary as admittedly, the Suit is for partition. Hence, the impugned order cannot be sustained and as such is liable to be set aside and is accordingly set aside. Application exhibit-72 stands allowed. Defendants No.1 to 7 shall carry out the amendment within 14 days from today and serve amended slips to the plaintiffs and other defendants. Rule is made absolute in the aforesaid terms with no order as to costs. Liberty is reserved to the parties to apply for expeditious disposal of the Suit. If such application is made, the learned trial Judge will pass appropriate order keeping in mind that some of the parties are senior citizens. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab