

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 10354 OF 2015

Mr. Amin Mehboob Mulani (dead)

Through LRs. And Anr.

...Petitioners

Versus

Mr. Shivshankar Vithoba Patil

...Respondent

....

Mr.P.G. Jagdale, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 15th DECEMBER, 2016

P.C.

1. Heard Mr. P.G. Jagdale, learned Counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'plaintiffs', have challenged the judgment and order dated 31.12.2014 passed by the learned Civil Judge, Junior Division, Mangalwedha below Exhibit-39 in R.C.S. No.53/2008. By that order, the learned trial Judge rejected the application made by the plaintiffs under Order VI Rule 17 of C.P.C. for amending the written statement filed by them to the counter-claim set up by the defendant.

3. The plaintiffs have instituted suit against the defendant *inter alia* for perpetual injunction restraining the defendant from causing obstruction to the plaintiffs possession. The defendant filed written statement and reply to Exhibit-5 and also set up counter-claim *inter alia* for declaration that the sale deed dated 19.11.1998 executed by the defendant in favour of plaintiff No.1 is hallow and was in effect a mortgage for the loan obtained by the defendant.

4. During pendency of the suit, the plaintiffs filed application under Order VI Rule 17 of C.P.C. for amending the written statement *inter alia* contending that the defendant came with the case that the plaintiffs had executed agreement on 19.11.1998. Said agreement is fabricated document. The plaintiffs have never executed said agreement in favour of the defendant. Said document also does not bear signature of the plaintiffs. As the document is brought in existence only at the time of setting up counter-claim, it is necessary to amend the written statement by incorporating paragraph-3A.

5. By the impugned order, the learned trial Judge rejected the application on the ground that by the proposed amendment

the plaintiffs have contended that they came to know about said agreement only after the counter-claim was made by the defendant. However, while instituting the suit itself, the plaintiffs produced document dated 19.11.1998 and consequently the ground set up by the plaintiffs that they were unaware of the said agreement is falsified. In view thereof, for the reasons recorded in paragraph-6 of the impugned order, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, Petition fails and the same is dismissed.

6. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by section 105(1) of C.P.C.

(R. G. KETKAR, J.)