

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

**WRIT PETITION NO.6987 OF 2017**

Shamabai w/o Dayanand Hurdale & others

Petitioners

Versus

Bhausahab s/o Prabhu Bawage

Respondent

Mr. A.P. Bhandari advocate for the petitioners

Mr. P.P. Dawalkar advocate for respondent

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CORAM : **RAVINDRA V. GHUGE, J**

(Date : 5<sup>th</sup> July, 2017.)

PER COURT :-

1 The petitioners are aggrieved by the order dated 28.2.2017, by which Application Exhibit 64 filed by the petitioners has been rejected. Consequentially, the prayer for amending the written statement for introducing paragraph 5-A has been rejected.

2 I have heard the strenuous submissions of Mr. Bhandari, learned Advocate for the petitioners and Mr. Dawalkar learned advocate appearing on behalf of the respondents.

3 There is no dispute that the petitioner No.1 turned a widow in March, 2012, when her husband passed away. She was impleaded as defendant No.1 in special Civil Suit No.68/2012. In November, 2012, she has filed her Written Statement.

4 The agreement indicating that, the plaintiff had given Rs.42 lakhs to defendant No.1 has been denied in the written statement. Defendant No.3 was a minor and is daughter of defendant No.1. Upon attaining majority, she filed her written statement at Exhibit 44 in 2016.

5 Exhibit 64, praying for the amendment was filed on 30.1.2017 in which paragraph No.5-A was proposed to be added to the written statement of defendant No.1.

6 Mr. A.P. Bhandari learned Advocate for the petitioners submits that on the date on which the application Exhibit 64 has been rejected by the impugned order, the issues were recast. As such, the reason cited by the Trial Court that, the evidence of the plaintiff is over and the defendants have also commenced recording of their evidence and hence an amendment cannot be permitted, are diluted.

7 Mr. Dawalkar, learned Advocate has defended the impugned order on the strength of the proviso to Rule 17 under Order 6 of the Civil Procedure Code.

8 Upon considering the submissions of the learned Advocates for the respective sides, I have gone through the proposed paragraph 5-A. I find that the contents of paragraph 5-A are in the

nature of oral submissions of the defendant No.1. They are practically argumentative in nature and the contents of the agreement at issue are analyzed in the said proposed paragraph. It is also mentioned that, "*Prima facie the documents at Exh.4/1 the construction and language on its face ambiguous and defective itself discloses that contents therein are not usual drafting of the deceased Adv. Hurdule. ....*"

9 Such contentions are not to be pleaded, so to say, and are prima facie argumentative in nature. Further, it has been mentioned in the proposed paragraph that, the alleged agreement is nothing but an after thought and is based on forged documents. I find them to be argumentative in nature and as such, they do not have trappings of the pleading.

10 Considering the above, this petition is disposed of without causing any interference in the impugned order. Needless to state, since the proposed paragraph 5-A, in my view, is argumentative in nature, the defendants would be at liberty to canvass those points before the trial Court, while putting forth their final submissions in the suit. The trial Court would consider the said arguments, in the light of the oral and documentary evidence adduced by the parties.

(RAVINDRA V. GHUGE , J)