

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5223 OF 2017
(Gayabai Ganpati Sarode Vs.Datta Ananda Sarode)

Mr.G.L.Deshpande, learned counsel for the petitioner.

(CORAM : M.S.Sanklecha, J.)

DATE : 24/04/2017

PER COURT :

1. This petition challenges the order dated 18/03/2017 passed by the Civil Judge, J.D. AUSA. By the impugned order, the petitioner's application to amend her written statement was rejected.

2. The plaintiff had filed a suit for partition and separate possession. The petitioner (original defendant No.3) filed her written statement on 04/03/2016. In her written statement, it was not her case that the plaintiff had not included ancestral and joint family properties in the suit for partition.

3. In the present case, it is undisputed that the suit is part heard and cross examination of the petitioner as well as her witnesses are complete. It is only after the aforesaid cross-examination was complete, an application was moved on for amendment of the written statement to allege that the suit is bad for non joinder of properties. The order

records the fact that the application for amendment to written statement did not plead that the suit was bad for non-joinder of the properties. Further the impugned order records that the petitioner did not give any reason for not taking up the proposed defence in her pleadings and only mentions that being illiterate and old lady, she inadvertently failed to mention the defence of non-joinder of properties in her written statement.

4. In the above view, the impugned order holds that the proposed amendment is hit by the proviso to order VI Rule 17 of the CPC which provides that an application for amendment should not be allowed after the trial has commenced unless the Court concludes that inspite of due diligence, the party could not place the material on record before commencement of the trial. The impugned order renders a finding of fact that amendment is sought to be done only to fill up the lacunas in the written statement when the case is at the fag end of the trial.

5. The view taken by the impugned order is a possible view on the basis of the pleadings and evidence before the Court. Therefore, there is no warrant exercise of my jurisdiction under Article 227 of the Constitution of India.

(M.S.Sanklecha, J.)