

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9768 OF 2017
(Jagannath Mohaniraj Raktate and others Vs. Bhaskar Karbhari
Udhar and others)

Mr.M.S.Shaikh, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/08/2017

PER COURT :

1. The petitioners are aggrieved by the order dated 03/03/2017 by which the application to amend the written statement after the Court Commissioner has measured the suit properties, has been allowed.

2. The grievance of the petitioners is that defendant Nos. 1 to 5 could not have filed the application Exh.39 seeking amendment Under Order 6 Rule 17 of the CPC after the TILR had measured the suit properties. By the proposed amendment, the defendants have raised a plea that they are owners of the suit property by way of an adverse possession. Further grievance of the petitioners/plaintiffs is that inconsistent stands have been taken by the defendants and that too after the witness of the plaintiffs has filed an affidavit in lieu of examination-in-chief and is awaiting cross-examination.

3. It is settled law that an inconsistent stand can be taken in the written statement. The defendants would suffer the consequences of such inconsistent stands. The Trial Court by relying upon the judgment delivered by this Court in the matter of Bharat Petroleum Corporation Vs. Previous Finance Investment Pvt. [2006(6) Bom C.R. 510], Venco Research and Breeding Farm Ltd., Vs. Rastriya Shramik Aghadi [2013(5) Mh.L.J. 674 (Bom.)] and Bharat Sanchar Nigam Ltd., Vs. Rakshak Industrial Security Agency [2014(2) Mh.L.J. 715 (Bom.)], has concluded that the plaintiffs would always be at liberty to contradict the varying stands taken by the defendants. Considering the amendment, I am of the view that the plaintiffs can also file an additional affidavit with regard to the newly introduced portion in the written statement and can lead evidence.

4. Considering the above, I do not find that the impugned order could be termed as being perverse, or erroneous or likely to cause gross injustice to the petitioner.

5. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)