

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10945 OF 2017
(Jyotiram Limba Surwase and others Vs. Pralhadrao Madhavrao
Pathak, died, through LR's and others)

Mr.V.S.Undre, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 21/09/2017

PER COURT :

1. The petitioners are aggrieved by the order dated 05/08/2017 passed by the Trial Court by which the applications Exh.129 and 131 in Reg.Civil Suit No.129/1980 have been rejected and the petitioners are not permitted to amend their counter claim. The petitioners are also aggrieved by the order dated 05/08/2017 by which Exh.131 has been rejected disallowing the petitioners from amending their written statement.

2. I have considered the strenuous submissions of the learned Advocate for the petitioners and have gone through the 13 grounds formulated by him. I have also considered the proposed amendment in Exh.129.

3. The proposed amendment is on the basis of the 7/12 extracts with regard to land survey No.175/1 and 175/2 for the years 1929-1930 to 1949-1950. I have perused Exh.129 and 131 in the light of the proviso to Order 6 Rule 17 of the CPC. I find that in neither of the two applications have the petitioners averred as to why these applications for amendment could not be filed earlier. Record reveals that these petitioners who are original defendants have themselves produced the 7/12 extracts in the 1980 suit. The said suit was decided by judgment dated 22/08/2013. The petitioners challenged the said decree in Regular Civil Appeal No.284/2013 and the same was allowed by judgment dated 25/11/2016 and the suit was remitted to the Trial Court by setting aside the said judgment.

4. Though the petitioners contend that Exh.129 and 131 were filed on 13/02/2017, it cannot be ignored that the proposed amendment is with regard to the 7/12 extract of the period 1929 to 1950.

5. Issue therefore is as to which were the circumstances which prevented the petitioners from seeking amendment to their written statement as well as the counter claim. Neither in Exhibit 129 nor in 131, is there any whisper about when did the petitioners receive the 7/12 extracts, when were they filed in the suit and what

prevented them from seeking amendment with promptitude.

6. The writ or supervisory jurisdiction of this Court cannot be exercised unless the impugned order is established to be perverse or erroneous. The impugned orders cannot be set aside on sympathy. I do not find that the impugned order could be termed as being unsustainable in the light of the contents of Exh.129 and 131. This petition is, therefore, dismissed.

(Ravindra V.Ghuge, J.)