

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11763 OF 2016

RAMA SAMBHA BHOSALE
VERSUS
ANNASAHEB SAKHARAM BHOSALE AND ANOTHER

Advocate for Petitioner : Shri R.R. Karpe.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 17th July, 2017

ORAL ORDER :

1. The petitioner is aggrieved by the order dated 05/07/2016, delivered by the Trial Court, by which, application Exhibit 37, filed by the defendants, seeking leave to amend the written statement has been allowed.

2. I have considered the submissions of Shri Karpe, learned advocate for the petitioner/plaintiff. He has strenuously criticized the impugned order on the ground that in his suit seeking a declaration, the partition, purportedly carried out under Section 85 of the Maharashtra Land Revenue Code, is bad in law. The defendants never explained their relations with

the plaintiff or between the litigating sides. Though, the written statement was filed long ago and the issues have already been already cast, the relations inter se were never pleaded by the defendants.

3. Shri Karpe, further submits that after the plaintiff filed an affidavit, in lieu of examination-in-chief and when the plaintiff was to be cross-examined, the defendants have filed Exhibit 37, praying for leave to add paragraph No. 20, in which the relations between all the litigating sides have been explained and the details of the shares owing to the partition under Section 85, have been given.

4. Shri Karpe, submits that this would lead to alteration in the stand of the defendants and the nature of the cause of action would also suffer an alteration. He relies upon the judgments in the matters of Vidyabai and others Versus Padmalatha and another [2009 (4) Mh.L.J. (S.C.) 30] and Sai Shraddha Developers, Sangamner and others Versus Ravindra Ganpatrao Bharitkar and others [2012 (6) Mh.L.J.]. He

strenuously contends that the proviso below Rule 17 of Order VI of the Code of Civil Procedure, was introduced in the year 2002 only to ensure that amendment at belated stages should not be permitted. Lack of due diligence and delay are crucial and hence, the Trial Court has erred in allowing the amendment application.

5. I find that when the plaintiff has filed the suit praying for a declaration that the partition under Section 85 is bad in law, the onus would be on the plaintiff to narrate as to how the said partition could be termed as being illegal. If an ancestral property is at issue and the partition has purportedly been effected under Section 85, the plaintiff would have to narrate as to how the share holders post such partition, are not entitled to their share. Even otherwise, the relations between the parties will have to be placed before the Court for a proper adjudication of the matter, since suppression of relations amongst the litigating sides would not be in the interest of all the litigating sides. So also, narrations of the relations amongst themselves would not change the nature of the cause of action.

6. The Hon'ble Apex Court in the matter of Andhra Bank Limited Versus ABN Amro Bank (AIR 2007 SC 2511), has held that delay could not be a reason to refuse amendment if complete justice is to be done. The Trial Court has awarded costs to the plaintiff for reducing his hardship while allowing the amendment application.

7. In my view, after the defendants amend their written statements, the petitioner/plaintiff would require an opportunity for leading further evidence since the amended portion will also have to be dealt with.

8. Keeping the above liberty open for the plaintiff, this petition is disposed of without causing an interference in the impugned order.

(RAVINDRA V. GHUGE, J.)