

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2395 OF 2017

Bayaji Laxman Ghanvat,since ..Petitioners.
deceased through hisheirs and
legal representatives, Shri
Shrirang Bayaji Ghanvat
(Mendkae) and Ors.

Vs

Ramchandra Laxman Ghanvat .. Respondents
(Mendake,since deceased
through his heirs and L.Rs,Shri
Baban Ramchandra ghanvat and
Ors

Mr. Dilip Bodake, Advocate for Petitioners.
Mr. Samarth More i/b V.S.Talkute, Advocate for Respondents

**CORAM : R.G.KETKAR,J.
DATE : 02/03/2017**

PC:

1. Heard Mr.Dilip Bodake, learned counsel for the petitioners and Mr.Samarth More, learned counsel for the respondents at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged common Judgment and order dated 13.2.2017 passed by the learned District Judge-1, Vaduj below Exhibits-44, 45 and 46 in Regular Civil Appeal No.260 of 2010.
3. Petitioners filed application Exhibit-44 for recasting issue no.2 framed by the learned trial Judge. Application at Exhibit 45

is for amending the written statement and the application at Exhibit-46 is under Order 41, rule 27 of C.P.C for production of documents.

4. In support of this petition, Mr Bodake invited my attention to (i) application Exhibit-46 filed by defendant no.1 under Order 41, rule 27 of C.P.C. for production of four sale deeds dated (1) 28.6.1921, (2) 26.7.1924, (3) 1.5.1936, and (4) 1.5.1936. In paragraph 2 of that application defendant no.1 contended that all ancestral properties were sold between 1921 and 1936. These sale deeds were not traceable and only in the year June 2012 the defendants could get hold of these documents. It is, therefore, necessary to produce these documents on record.

5. By application Exhibit-45, the defendant wants to incorporate paragraph 2A to contend that during the lifetime at the time of death of Laxman no ancestral properties were available and consequently there was no question of partition. From these properties no income was generated. He submitted that basically this is consistent with the case made out by the defendants in the written statement. He has taken me through paragraph 8 of the written statement in support of this proposition. Application- Exhibit 44 was made for deleting issue no.2 thereby framing issue as to whether the plaintiffs have established that in the year 1946 there was sufficient income to purchase the property. He submitted that the learned District

Judge committed error in dismissing the applications.

6. On the other hand, Mr More supported the impugned order.

7. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. A perusal of the written statement shows that the defendant contended that on 30.4.1946 he had purchased the property for a consideration of Rs.400/-. The defendant was working as collie in Mumbai at Bag. since 1940 and from his savings, he had purchased the property on 30.4.1946. Prima facie, a perusal of the written statement does not indicate that all the ancestral properties were sold between 1921 and 1936. In view thereof, I do not find that the learned District Judge committed any error in rejecting the applications Exhibits 45 and 46.

8. As far as application-Exhibit 44 is concerned for deleting issue no.2 and recasting that issue is concerned, equally as I did not find that the learned District Judge committed any error in rejecting the applications Exhibits 45 and 46, no fault can be found with rejection of application Exhibit 44. Hence, petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of proceedings as contemplated by Section

105(1) of C.P.C. Learned District Judge will decide the appeal uninfluenced by the observations made herein. Order accordingly.

(R.G.KETKAR, J.)