

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7513 OF 2012

Laxman Appa Tejam

Since deceased through Lrs.

1a. Smt.Droupadi Laxman Tejam and ors. .. Petitioners

Vs.

Dnyanoba Ramu Tejam and ors.

.. Respondents

Mr.Rahul P. Walvekar, for the Petitioners.

Mr.S.G.Karandikar, for Respondent No.1.

CORAM : M.S.KARNIK, J.
02nd FEBRUARY, 2017

P.C. :

. The petitioners – original plaintiffs seek to challenge the order dated 20/01/2012 passed by the Appellate Court thereby allowing application for amendment filed by the original defendants no. 1 & 3 seeking amendment in the original written statement filed by them before the trial Court for adding paragraph 5-A regarding the status of the proceedings of Regular Civil Suit No. 45 of 1964. According to original

defendants no. 1 & 3, the said amendment is necessary to resolve the dispute between the parties and to know the status of the said proceedings

2. The petitioners opposed the said application for amendment contending that it amounts to taking away admissions that were given earlier by defendants no. 1 & 3. According to the petitioners – plaintiffs in the original written statement, defendants no.1 & 3 had admitted that land came in possession of the original owner and mutation was effected and by way of present amendment, they are seeking to withdraw that.

3. The Appellate Court was pleased to allow the said application for amendment below Exhibit 26 to the written statement at the Appellate state.

4. The learned Counsel for the petitioner contend that the said application for amendment ought not to have been entertained by the Appellate Court and the same has been made

belatedly after almost 5 years from filing of the Appeal. Moreover, according to him, in the application for amendment which is filed belatedly, there is no explanation whatsoever given by the original defendants no. 1 & 3 as to why the same was not taken earlier. In his submission, therefore, the original defendants no. 1 & 3 are not diligent in making application and on this count itself, the application deserves to be rejected.

5. Moreover, according to him, the amendment virtually amounts to taking away the admission which the plaintiffs had given earlier and this prejudices the case of the plaintiffs which cannot be permitted and that too at this stage.

6. I have gone through the order passed by the learned Appellate Court. Learned Appellate Court has exercised its discretion and allowed the application for amendment as the same does not have the effect of withdrawal of the admissions of the defendants No. 1 & 3 at the the highest, the same would amount to taking contradictory pleas. I, therefore, do not find any reason to interfere with the impugned order passed by the

Appellate Court. Hence, the Petition is rejected with no order as to costs.

(M.S.KARNIK, J.)