

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

CIVIL WRIT PETITION NO. 635 OF 2017

Shri Dattu Tukaram Chavan(deceased)
through L.Rs. & ors. ... Petitioners.
Versus
Shri Pandurang Rajaram Chavan. ... Respondent.

Mr. Sachin Gite, advocate for petitioners.

Mr. Amey Deshpande, advocate for respondent.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : NOVEMBER 7, 2017**

P.C.:

1 Heard the learned Counsel for the Petitioners and the learned Counsel for the respondent.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The petitioners herein happen to be the original plaintiffs in RCS No. 139 of 2009 pending before the Civil Judge, S.D. at Nashik.

After filing of the suit, the original plaintiff No. 1 had expired and therefore, it was necessary to bring the legal heirs of the original Plaintiff No.1 on record. The plaintiffs had filed application seeking permission to bring the legal heirs on record. Admittedly, there was delay in filing the said application and therefore, the application was rejected. Being aggrieved by the said order, the Petitioners had filed Writ Petition No. 2200 of 2014 which was allowed by an order dated 28/8/2015 and this Court (Coram : R.M. Sawant, J) had further directed that the amendment to be carried out within 4 weeks from the date and the amended cause title to be served on the other side. The Petitioners were saddled with the cost of Rs. 2000/-. The cost was paid and the amendment was carried out as directed by the High Court.

4 It appears that on 2/12/2015 the original defendant had filed additional written statement and had, by way of additional written statement objected not only to the amendment, but had contended on merits in respect of the possession of the legal heirs as well. It is

pertinent to note that the defendant had not obtained any permission from the court for filing additional written statement. The plaintiffs had objected to the additional written statement being taken on record. The learned 5th Joint Civil Judge, S.D., Nashik had rejected the application filed by the plaintiffs below Exh. 63 objecting to additional written statement. Hence, this petition.

5 The learned Court has failed to see that bringing legal heirs on record would not amount to amending the plaint. There was only a change in cause title as directed by the High Court in Writ Petition No. 2200 of 2014 and therefore, that by itself would not ipso facto give right to the defendant to file additional written statement without obtaining permission from the court. It appears that the learned Court had committed a grave error in holding that bringing legal heirs on record amounts to amendment in the plaint and therefore, the said contention raised by the defendant was upheld.

6 In fact, the additional written statement is not just objecting to the amendment in the cause title, but there have been pleadings on merits of the matter as far as the possession is concerned and the said contention was already raised in the earlier written statement.

7 In view of this, the impugned order dated 5/10/2016 deserves to be quashed and set aside. The learned Jt. Civil Judge, S.D. Nashik seized with RCS No. 139 of 2009 shall not take additional written statement on record and shall frame the issues in consonance and after considering the contents of the plaint as well as the original written statement filed by the defendant. In any case, the written statement was filed without permission of the court and hence, it would not amount to striking of the pleadings.

8 Hence, the Petition is allowed. Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV,J)

