

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4047 OF 2016

Ramjan Babalal Kalavant and others ... Petitioners
Vs.
Ruksana Ahmad Kalavant and others ... Respondents

Mr. Amit Sale for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 17, 2017

P.C. :

Heard Mr. Sale, learned Counsel for petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants', have challenged the judgment and order dated 01.08.2015 passed by the learned 2nd Joint Civil Judge, Senior Division, Sangli below exhibit-21 in Special Civil Suit No.229 of 2012. By that order, the learned trial Judge allowed the application made by the plaintiffs under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the plaint.

3. In support of this Petition, Mr. Sale invited my attention to the averments made by the plaintiffs in the application for amendment as also paragraph 17 of the written statement of the defendant No.1. He submitted that the proposed amendment is made to get over the averments made in paragraph 17 of the written statement, and therefore, the learned trial Judge was not justified in allowing the application. Apart from that, the learned trial Judge though allowed plaintiffs to carry out amendment in the plaint, did not permit defendants to file written statement to the amended plaint.

4. I have considered the submissions advanced by Mr. Sale. I have also perused the material on record. In paragraph 10, the learned trial Judge has observed that the trial has not commenced. In paragraph 11, the learned trial Judge has observed that by the proposed amendment, plaintiff has claimed additional relief merely for partition. The learned trial Judge, therefore, allowed the application for amendment. For the reasons recorded in paragraphs 10 to 13, I do not find that the learned trial Judge has committed any error in that regard. At the same time, defendants are at liberty to file written statement to the amended plaint. Such written statement shall be filed within 8 weeks from today. Subject to this, Petition fails and the same is dismissed.

5. It is, however, expressly made clear that where a decree is appealed from by the petitioners, 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 appeal as contemplated by Section 105(1) of C.P.C.

6. All parties, including the trial Court, to act upon the authenticated copy of this Order.

(R. G. KETKAR, J.)

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