

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.197 OF 2017

Sangram Dilipsinh Jadhavrao and others ... Petitioners
Vs.
Narayan Laxman Bhagwat and others ... Respondents

Mr. R. V. Govilkar i/b. Govilkar and Associates for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 12, 2017

P.C. :

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

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'plaintiffs', have challenged the judgment and order dated 09.08.2016 passed by the learned Adhoc District Judge-1 and Additional Sessions Judge, Baramati below exhibit-17 in Regular Civil Appeal No.72 of 2011. By that order, the learned District Judge rejected the application made by the plaintiffs-appellants for amending the appeal memo.

3. In support of this Petition, Mr. Govilkar submitted that the learned District Judge has rejected the application mainly on the ground that the grounds raised in the proposed amendment were fully agitated at the time of final hearing of the Appeal. As whatever grounds raised by the plaintiffs are already argued by the plaintiffs at length, he did not find any substance that the said grounds are required to be considered again and again.

4. Mr. Govilkar has taken me through the application for amendment and submitted that it will not be possible for the plaintiffs to

seek relief against the appellate decree as the other side would contend that there is nothing on record to justify that in fact such grounds were raised and heard before the learned District Judge. He further submitted that plaintiffs will not make any submissions after the amendment is carried out and therefore, the attempt in filing the amendment application is not to protract the litigation. He also invited my attention to the findings recorded by the learned trial Judge against the issue No.1 and the discussion in paragraph 23. He submitted that whereas finding in respect of issue No.1 was in the negative, in paragraph 23, the learned trial Judge answered that issue in the affirmative. However, the said ground was not specifically raised in the appeal memo. He has also taken me through the appeal memo.

5. I have considered the submissions advanced by Mr. Govilkar. I have also perused the material on record. In paragraph 6 of the impugned order, the learned District Judge has considered each ground in the amendment application for amendment of the appeal memo. The learned District Judge observed that all the grounds were agitated at the time of hearing of the appeal. He further observed that law points need not be pleaded and can be argued at any stage. For the reasons recorded in paragraph 6 of the impugned order, I do not find that the learned District Judge has committed any error in passing the impugned order. If at all plaintiffs wanted to amend the appeal memo, they should have filed application for amendment before the commencement of the arguments before the appellate Court. It is only after the arguments were over, they took out application for amendment of the appeal memo on the ground that if those grounds are not raised, it will be difficult for them to agitate those grounds in the higher Court as other side will contend that such grounds were not raised.

6. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab