

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

**WRIT PETITION NO.2329 OF 2015**

Babasaheb Haribhau Kokate

Petitioner

Versus

Shri Chandrakant Haribhau Kokate and others

Respondents

Mr.M.S. Kulkarni advocate for the petitioners

Mr.V.V. Ingale h/f Mr. V.B. Deshmukh for respondents

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CORAM : **V.K. JADHAV,J**

(Date: January 29th, 2018)

**PER COURT :-**

1 By consent of the parties heard finally at admission stage.

2 Being aggrieved by the order passed below Exhibit 133 in Special Civil Suit No. 51 of 2013 dated 9.1.2015 by the Civil Judge, Senior Division, Osmanabad, the petitioner has filed the instant petition.

3 The brief facts giving rise to the present petition are as under :-

The petitioner – original defendant No.1 has raised a plea

that the partition has already been effected between the parties and a memorandum of partition has been prepared and kept to that effect. During pendency of the said suit, the petitioner original defendant No.1 has filed application Exhibit-133, stating therein that the said memorandum of partition was prepared in two sets and even though one of the said sets is already placed on record, the second set of the said document is also required to be produced on record and inadvertently, the petitioner defendant has not given reference of the said fact in the written statement.

4 The learned Judge of the trial Court has rejected the said application and hence, this writ petition.

5 The learned counsel for the petitioner submits that in the cross-examination, the respondent plaintiff has admitted about preparation of memorandum of partition, however, stated that the said memorandum was temporary in nature and the defendant No.1 (petitioner herein) has obtained his signatures on the said memorandum after preparing it. Learned counsel submits that, in fact, on that day, not only one but two sets of memorandum of partition were prepared and copy each was kept by the plaintiff and respondent respectively. Learned counsel for the petitioner submits that the proposed amendment is

explanatory in nature. In view of the same, the proposed amendment is necessary. In order to substantiate his submission, he placed reliance on the ratio laid down by the Supreme Court in case of **Piedade Ferandes versus Charlene Leitao** (2012, 1 Mah LJ 317).

6 Learned counsel for the original plaintiff submits that after commencement of the trial and even after the cross-examination of the plaintiff was over, the petitioner defendant has filed the application Exhibit 133, seeking amendment in the Written Statement. The Trial Court has rightly rejected the application. No interference is called for.

7 On careful perusal of the contents of the Application Exhibit 133, it is the contention of the petitioner that on 7.1.1986, for the same contents, two sets of the memorandum of partition are prepared for the reason that both the parties would get one set each and may use the same for taking entries in the revenue record. If two sets of the same document are prepared, I do not find that the proposed amendment is necessary. The document of the memorandum of partition is already placed on record and the respondent plaintiff has already given certain admissions in respect of the said memorandum of partition. In view of the same, proposed amendment is unwarranted and uncalled for.

The Trial Court has rightly rejected the application Exhibit 133.

No interference is called for.

8      Writ petition is dismissed.

9      No order as to costs.

**( V.K. JADHAV, J)**

vbd