

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4738 OF 2017
(Priti Harshavardhan Sonawane and another Vs. Sanvin
Charanjitsing Oberoi and others)

Mr.S.T.Shelke, Advocate for the petitioners.
Mrs.C.S.Deshmukh, Advocate for respondent Nos.1 to 3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 03/07/2018

PER COURT :

1. The petitioners/defendant Nos.2 and 3 in RCS No.147/2013 are aggrieved by the impugned order dated 28/11/2016 by which the application Exh.51 filed by the said defendants, seeking introduction of paragraph No.19-A has been rejected

2. Learned Advocate for these defendants submits that defendant No.1 is the mother of defendant no.2 and mother in law of defendant No.3. She passed away on 30/05/2016. She has left a registered Will Deed on the basis of which defendant No.2, as a daughter, has been granted an undivided share in the property. These defendants therefore claimed to have acquired a title over the said property owing to the demise of defendant No.1. If she is a co-sharer or co-owner of the suit property, the plaintiffs can not seek injunction against a co-

owner or a co-sharer. The proposed amendment is only to bring on record the change in circumstances that has occurred owing to the demise of defendant No.1.

3. Learned Advocate for the plaintiffs strenuously submits that the suit has been filed only to seek injunction against the defendants on the basis of the possession held by the plaintiffs over the suit property. No other issue is addressed to the Trial Court for adjudication. In the absence of any issue as regards the validity of the Will Deed, these defendants are not required to introduce the said amendment. If the proposed amendment is unconnected with the cause of action put forth in the suit, the Trial Court has rightly rejected the application.

4. I find that the plaintiffs have put forth a detailed narration in paragraph No.5 about the conduct of the defendants. It is stated that the suit property does not belong to them and the plaintiffs have a legal right over the said suit property. Based on such contentions and in view of the purported possession over the suit property, the plaintiffs have sought an injunction. In this backdrop, the claim of these defendants pursuant to the demise of defendant No.1 as regards being a co-owner of the suit property, will have to be brought

on record, if the defendants' case is of no injunction to be granted against a co-owner.

5. It is settled Law that the merits of the amendment are not to be gone into while considering an application under Order VI Rule 17 of the CPC. The proposed amendment must have some nexus with the pleadings of the other side and the cause of action. These defendants seek to oppose the prayer for injunction by taking a stand that injunction cannot be granted against a co-owner. So also, application Exhibit 51 has been filed within 3 months from the date of the demise of defendant No.1. It is also settled law that an amendment in a written statement is to be liberally construed.

6. As such, this petition is allowed. The impugned order dated 28/11/2016 is quashed and set aside and application Exh.51 is allowed. The petitioner/defendant shall carry out the amendment in their written statement by introducing paragraph No.19-A within a period of 4 weeks from today, if not already so done. The plaintiffs would be at liberty to enter an affidavit for opposing the amended portion, if so advised.

(Ravindra V.Ghuge, J.)