

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2391 OF 2018
MANIKRAO YADAVRAO PATHADE
VERSUS
DNYANESHWAR DATTATRAY WAYAL AND OTHERS

WITH

WRIT PETITION NO. 2400 OF 2018
MANIKRAO YADAVRAO PATHADE
VERSUS
CHABUBAI PANDURANG PAWAR DIED LRS

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Advocate for Petitioners : Shri Doke Kishor R.
AGP for Respondents 2 to 5 : Shri Yadav S.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 06, 2018

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PER COURT :-

1. The petitioner is aggrieved by the impugned orders dated 9.2.2018, by which, the trial Court has rejected his application Exhibits 79 and 93 respectively, filed in the two suits praying for leave to amend the Written Statement. Contention is that the details about how the defendant became the owner of the land needs to be better explained and hence, leave to amend the Written Statement was sought.

2. The petitioner is the same defendant No.5 in RCS No.468 of 2012 and 647 of 2012, respectively. In both these suits, the

respondents / original plaintiffs seek a declaration of ownership and title over the suit property. The petitioner has filed his Written Statement in September, 2012 and while praying for the dismissal of the suit, has set out his pleadings to indicate his ownership. The State authorities, who are also defendants, have filed their Written Statement in October, 2012 and have put forth the issue as regards how the defendant has lost his land in acquisition proceedings and being project affected, he was allotted the suit land, by which, he has become the owner of the said land. These events are of 1986.

3. I do not find that the impugned order could be termed as being perverse or erroneous for two reasons. Firstly, that the onus and burden of proving ownership has already been cast upon the plaintiff by the trial Court while framing the issues and the State authorities have put forth specific contentions in their Written Statement indicating how this petitioner has become the owner of the suit land after the procedure laid down in law was followed. Secondly, that these developments date back to 1986 and are within the knowledge of the petitioner. There is no explanation put forth in application Exhibits 79 and 93 as to what were the circumstances that prevented this petitioner from putting forth the contentions set out in the proposed

amendment, when the Written Statement was filed in 2012. The fact which the petitioner knew for 26 years, could have been put forth in the written statement.

4. Even otherwise, the factum about the ownership of the petitioner has been placed before the trial Court through the Written Statement filed by the State authorities and as such, I do not find that it would be necessary for the petitioner to amend the Written Statement.

5. Considering the above, both these petitions are dismissed.

(RAVINDRA V. GHUGE, J.)

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