

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2393 OF 2018

MIRZA SADEQ LAL BAIG AND OTHERS
VERSUS
MUMTAZ BEGUM SHAIKH KAREEM AND OTHERS

...
Advocate for the Petitioners : Shri Q.R.Syed a/w Shri G.R.Syed.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th March, 2018

Per Court:

1 The Petitioners, who are the original Defendants in RCS No.300/2017, are aggrieved by the order dated 06.02.2018 passed by the Trial Court by which, the application Exhibit-15 filed by the Plaintiffs seeking a slight amendment to the plaint, has been allowed and the Plaintiffs are permitted to replace the word "partition" by "lawful share by way of succession".

2 The grievance of the Petitioners is that the Plaintiffs have completely altered the nature of the cause of action. They have filed the suit for partition, separate possession and recovery of possession. Once the suit is filed for partition, the Plaintiffs cannot claim reliefs by replacing the

word "partition" by the word "succession". Some proceedings with regard to the issuance of the Succession Certificate are also pending.

3 Reliance is placed upon the judgment of the Honourable Supreme Court in the matter of M/s Revajeetu Builders and Developers vs. M/s Narayanaswamy and Sons and others, AIR 2009 SC (Supplementary) 2897, to contend that the Honourable Supreme Court has framed specific principles which are to be taken into account while considering the application for grant of amendment.

4 I have considered the submissions of the learned Advocate for the Petitioners/ Defendants and have gone through the judgment cited.

5 The Honourable Supreme Court has framed six principles in M/s Revajeetu Builder (supra), which are as under :-

- (1) Whether, the amendment sought is imperative for proper and effective adjudication of the case?
- (2) Whether, the application for amendment is bona fide or mala fide?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money.
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation.

- (5) Whether, the proposed amendment constitutionally or fundamentally changes the nature and character of the case?
- (6) As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

6 There can be no dispute that the suit has been filed on the basis of the claim by the Plaintiffs that they are closely related to the Defendants. Certain agricultural lands and house properties (13 properties) have been mentioned as the suit properties. The suit has been filed on 27.06.2017. Before the Defendants could cause an appearance in the suit and file their Written Statement, Exhibit-15 was filed by the Plaintiffs on 28.07.2017 which is within 30 days from the filing of the suit. It is specifically stated in the said application that inadvertently, the Plaintiffs have used the word "partition" at certain places where the word "succession" should have been mentioned so as to indicate that they get their lawful share in the properties by succession and not by partition. It is, therefore, apparent that with great promptitude the Plaintiffs have filed their application admitting before the Trial Court that the word "partition" was erroneously used and would cause irreparable harm and serious prejudice to the Plaintiffs.

7 This is in view of the fact that under the Mohammedan Law,

the share of any person can be determined by succession. Succession is the word which these parties feel more appropriate to be used while seeking a share in the property. Within one month of the institution of the suit, the Plaintiffs have realized their mistake and they filed the application even before the Defendants could enter their Written Statement, which they have eventually done on 06.02.2018, which is after more than six months from the filing of the application for amendment. This, therefore, would indicate that due diligence is established by the Plaintiffs.

8 The Honourable Supreme Court has consistently held that the merits of the proposed amendment are not to be gone into while considering the application seeking leave to amend. The said aspect is left open for the Trial Court to decide.

9 In the present case, I do not find that the nature of the litigation would be altered and more so, when the Plaintiffs have rushed to the Trial Court within 30 days of the institution of the suit seeking leave to correct error that has crept in the plaint as well as the application for temporary injunction.

10 In the light of the above, the view taken by the Honourable Supreme Court in M/s Revajeetu Builders (supra) would infact enable the Plaintiffs to cause an amendment which has been permitted by the Trial Court vide the impugned order. I do not find that the impugned order could be termed as being perverse or erroneous or likely to cause

gross injustice to the Petitioners/ Defendants.

11 As such, this Writ Petition being devoid of merit is, therefore,
dismissed.

kps

(RAVINDRA V. GHUGE, J.)