

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2547 OF 2018

(Feroz Khan s/o Mir Alam Khan and another Vs. Noor Khan s/o Taj
Khan and others)

Mr.S.G.Dodiya h/f Mr.P.N.Muley, Advocate for the petitioners.
Mr.D.P.Deshpande, Advocate for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 14/03/2018

PER COURT :

1. The petitioners, who are original defendant Nos.4 and 5 are aggrieved by the order dated 07/02/2018 passed by the Trial Court in RCS No.351/2006 by which the application Exh.294 filed by these defendants praying for leave to amend the written statement has been rejected.

2. I have considered the strenuous submissions of the learned Advocates for the petitioners and respondent No.1/ original plaintiff, who is the contesting party.

3. Considering the controversy, I am not required to advert to the entire submissions of the learned Advocates. Suffice it to say that the plaintiff seems to rest his case on the judgment delivered by the

Trial Court in year 1350 fasli which was filed by the father of the plaintiff for seeking partition of the movable and immovable properties . The suit RCS No.223/01 of 1350 fasli (1940) came to be decreed on 28th Ar-bedhis 1351 F. (*Reproduced verbatim from paragraph No.2 of the writ petition and paragraph No.5 of the plaint in RCS No.351/2006-Page No.13 of the petition paper book.*) After a great search, pursuant to the events which have been narrated in Exh.294, the petitioner found out that the execution proceedings RD No.10/1979 filed by the father of the plaintiff seeking execution, has been dismissed and this aspect has not been brought to the notice of the Trial Court.

4. I have gone through the proposed amendment in paragraph No.35-A and I find that the entire contents are purely argumentative in nature. Arguments are not to be pleaded in the plaint or the written statement. Ends of justice would be met if the petitioners are permitted to place on record before the Trial Court the judgment of the Executing Court in RD No.10/1979.

5. Considering the above, this petition is partly allowed. Though I am not interfering with the impugned order, the Trial Court would note that the petitioners are permitted to place on record a certified

copy of the judgment of the Executing Court in RD No.10/1979 within a period of 3 (three) weeks from today. After the same is filed, the Trial Court would consider the said judgment while evaluating the contentions and pleadings of the plaintiff and would take into account the effect of the said judgment. The observations made in paragraph No.10 of the impugned order would not influence the Trial Court while deciding the said suit and while considering the effect of the judgment which the petitioners would produce.

(RAVINDRA V. GHUGE, J.)