

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1051 WRIT PETITION NO. 7543 OF 2017

NIRMALABAI W/O MAHAVIR JAIN
VERSUS
CHANDULAL S/O SUKHRAJ BANTHIYA AND OTHERS

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Advocate for Petitioner : Mr. Sonpethakar Pradeep N.
Advocate for Respondents : Mr. R. R. Imale for Respondent Nos.
1 and 2.

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CORAM : V. K. JADHAV, J.
DATED : 23rd FEBRUARY, 2018

PER COURT:-

1. Heard finally by consent at admission stage.
2. Being aggrieved by the order dated 05.12.2016 rejecting the application Exhibit 91, the original defendant no.2 has preferred this Writ Petition.
3. The respondent nos. 1 and 2/original plaintiffs have instituted the Suit bearing R.C.S. No. 228 of 2008 under Sections 15 and 16 of the Maharashtra Rent Control Act, 1999 for a decree of eviction in respect of shop 'A' on the ground floor and the entire first floor of the House No.433, Ward No.20 as described in the map, situated at Shivaji Chowk, Parbhani. In the

pending Suit, the petitioner/original defendant no.2 has filed her written statement and afterwards filed an application Exhibit 91 seeking amendment in the written statement. The trial Court has rejected the said application. Hence this Writ Petition.

4. The learned counsel for the petitioner-original defendant no.2 submits that by way of proposed amendment, the petitioner-defendant no.2 brought to the notice of the Court that deceased mother Umraobai, by way of a will deed, bequeathed the suit property exclusively to the petitioner/defendant no.2 and as such, she became the owner of the suit property after the death of her mother Umraobai. The learned counsel submits that though at the belated stage, the petitioner has filed the application seeking amendment in the written statement, there is no question of changing the nature of the Suit since the petitioner being a defendant can raise as many defences as are available to her.

5. The learned counsel for the respondents/original plaintiffs submits that it is the case of the petitioner/defendant no.2 that deceased Umraobai, during her lifetime, has executed the will

deed on 15.10.2007. The Suit was instituted in the year 2008 and Umraobai died on 16.01.2008. The respondents-plaintiffs have instituted the Suit after the death of Umraobai. Though the petitioner has not filed her written statement till the year 2011 and filed it on 02.09.2011, however, in the said written statement, there is no reference to the alleged will deed. The plaintiffs have filed affidavit of evidence on 15.06.2009. Thereafter, various orders passed by the trial Court came to be challenged by the petitioner/defendant no.2 and the other defendant and finally, the petitioner-defendant no.2 has filed the application Exhibit 91 on 15.03.2016 seeking amendment in the written statement. The learned counsel submits that the petitioner, if desires, may institute a Suit on the basis of the alleged will deed. However, in absence of any counter claim in the Suit instituted by the respondents-plaintiffs, the petitioner cannot propose amendment as detailed in the application Exhibit 91. The trial Court has thus, rightly rejected the application Exhibit 91.

6. I find no substance in this Writ Petition. The petitioner has not filed her written statement till the year 2011 and even

though she was knowing about the alleged will deed executed by deceased Umraobai in her favour in respect of the suit property, she has failed to refer the same in her original written statement. However, after commencement of trial, the petitioner has sought amendment in the written statement incorporating those facts in the year 2016 only. The trial Court has therefore rightly rejected the application Exhibit 91. The Writ Petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

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