

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 11637 OF 2017

MUKTABAI DIGAMBAR AMLE  
VERSUS  
MUDRIKABAI RAMRAO DHUMAL AND OTHERS

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Advocate for Petitioner : Shri Urgunde Suhas P.  
Advocate for Respondents 1 & 2 : Shri Yeramwar S.C. h/f Shri Irale E.G.

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CORAM : RAVINDRA V. GHUGE, J.  
Dated: November 27, 2018

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PER COURT :-

1. The petitioner / plaintiff is aggrieved by the order dated 30.3.2017, by which, the trial Court has rejected application Exhibit 75 filed by her seeking leave to amend the plaint in RCS No.216 of 2009.

2. I have heard the submissions of the learned Advocates for the petitioner and respondents 1 and 2. Respondent No.3 has not chosen to cause an appearance despite being served by Court notice.

3. There is no dispute that the plaintiff has sought an amendment to a very limited extent after all the litigating sides have closed their evidence. Contention is that after the defendants led evidence, the plaintiff gathered the knowledge that her deceased father Ramrao, who

is the husband of defendant No.1 and father of defendants 2 and 3, owned an ancestral land Gut No.134 in village Limbgaon, taluka Ambajogai to which, he belongs. He had sold the said land along with an existing house and utilized the proceeds of the said sale to purchase the suit land, which is said to be inherited by the defendants. Further contention, therefore, is that the deceased father had sold an ancestral property and the sale proceeds were utilized to purchase the suit property, which would, therefore, bring the said property within the ambit of a property purchased from the sale proceeds of the ancestral property. The plaintiff then would have a share in the said property.

4. Learned Advocate for the defendants points out from the written statement that it was specifically denied that the deceased father had inherited land Gut No.134 in his ancestral village. It was also denied that the said property was sold by the deceased father. It is, therefore, strenuously canvassed that the plaintiff could have moved an application to seek an amendment with promptitude and should not have waited for more than six years to move Exhibit 75. It is also contended that the 7/12 extract with regard to Gut No.134 and the mutation entry No.386 would indicate that deceased Ramrao had a younger brother by name Damodhar and hence the name of Ramrao was shown in the revenue record as being the title holder since he was an elder brother.

5. The Honourable Apex Court has crystallized the law in the cases of Chakreshwari Construction Private Limited Vs. Manohar Lal [(2017) 5 SC 212] and Revajeetu Builders and Developers Vs. Narayanaswamy and sons [(2009) 8 MLJ 907- (SC)], that the merits of the proposed amendment are not be considered. If an amendment would avoid multiplicity of litigation, would be necessary for adjudication of a claim and would not lead to an independent cause of action, such an application could be considered under Order VI Rule 17 of the Code of Civil Procedure.

6. From the contentions of the parties, it does appear from the revenue records that Gut No.134 has some connectivity with the suit filed by the plaintiff seeking partition and separate possession. If the proposed amendment does not change the nature of the cause of action and since a suit for partition and separate possession requires all the ancestral properties being put in the common hotch pot, I find that the trial Court should have allowed application Exhibit 75. Costs could have been granted to the defendants to penalize the plaintiff for having not made the application with promptitude.

7. In view of the above, this petition is partly allowed. The impugned order dated 30.3.2017 is quashed and set aside. Application

Exhibit 75 is allowed, subject to the following conditions:-

(A) The plaintiff shall deposit an amount of Rs.9,000/- before the trial Court on/or before 15.12.2018. This would be inclusive of Rs.1,000/- if deposited by the plaintiff pursuant to the impugned order.

(B) The three defendants shall withdraw the said amount without conditions in equal proportions.

(C) The plaintiff shall carry out the amendment and shall place on record a freshly typed copy of the amended plaint on/or before 15.12.2018.

(D) The defendants are at liberty to file an additional written statement within four weeks thereafter.

(E) The trial Court may frame an additional issue if deemed proper on the basis of the amendment.

(F) Notwithstanding whether an additional issue is framed, the litigating sides would be at liberty to lead evidence only to the extent of the amended portion.

( RAVINDRA V. GHUGE, J. )

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