

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 WRIT PETITION NO. 7610 OF 2017

SHIVRAJ BHAGWANTHRAO DESHMUKH
VERSUS
SANTOSHI PALLAVI SHIVRAJ DESHMUKH AND OTHERS

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Advocate for Petitioner : Mr. Prakash S. Paranjape
Advocate for Respondent Nos. 1 to 3 : Mr. A. G. Godhamgaonkar
Advocate for Respondent No.4 : Mr. Amit A. Mukhedkar

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CORAM : V. K. JADHAV, J.
DATED : 28th FEBRUARY, 2018

PER COURT:-

1. Learned counsel appearing for respondent no.4 submits that during pendency of this Writ Petition, respondent no.4 died.
2. Respondent no.4 is a co-defendant. This Petition has been preferred by the original defendant no.1 against the order dated 18.04.2017 passed by the trial Court rejecting the application Exhibit 371 filed by the original defendant no.1 seeking amendment in the written statement. In view of the same, it would be unwanted and time consuming to bring on record the legal representatives of respondent no.4 in this Writ Petition. The

parties are at liberty to bring on record the legal representatives of respondent no.4 in the pending Civil Suit. Name of respondent no.4 be deleted from the array of respondents.

3. Heard finally with consent of the petitioner and respondent nos. 1 to 3 at admission stage.

4. Being aggrieved by the order passed below Exhibit 371 in Special Civil Suit No. 12 of 2000, the original defendant no.1 has preferred this Writ Petition.

5. The petitioner/original defendant no.1 has filed application Exhibit 371 seeking amendment in the written statement, especially in para no. 5 of the written statement to the effect that the petitioner/original defendant no.1 has mentioned in the said para that plaintiff is entitled for the partition. Instead of that, by way of amendment, the petitioner/original defendant no.1 wants to say that the plaintiff is not entitled for the partition. The respondent/original plaintiff has strongly resisted the said application and the learned Judge of the trial Court, by the impugned order dated 18.04.2017, has rejected the said application. Hence this Writ Petition.

6. The learned counsel for the petitioner/original defendant no.1 submits that if the entire tenor of the written statement is considered, it appears that the petitioner/defendant no.1 has denied each and every averment made in the plaint with the specific pleading that the plaintiffs are not entitled for partition in respect of the so-called ancestral property. The learned counsel submits that inadvertently, in para 5 of the written statement, instead of saying 'not entitled', it has been stated as 'entitled'. By filing application Exhibit 371, the petitioner wants to correct the same. The amendment sought is extremely formal in nature. However, the learned Judge of the trial Court has rejected the application Exhibit 371.

7. The learned counsel for the respondents/plaintiffs submits that by way of the proposed amendment, the petitioner/original defendant no.1 is denying the entitlement of the plaintiff for partition, whereas in the original paragraph, he has accepted the same. The learned counsel submits that the conduct of the present petitioner is quite objectionable and the trial Court has observed the same. In view of this, no interference is required in the impugned order. The Writ Petition is liable to be dismissed.

8. On perusal of the copy of the written statement filed by the petitioner/defendant no.1 which is placed on record, it appears that the petitioner/defendant no.1 has denied each and every averment in the plaint by pleading specifically that the respondent/original plaintiffs are not entitled for partition. It thus appears that by way of the proposed amendment, the petitioner/defendant no.1 wants to correct the mistake wherein it has been inadvertently stated that the plaintiff is entitled for partition instead of 'not entitled for partition'. The proposed amendment is extremely formal in nature. The learned judge of the trial Court should have considered the application in its right context, however, rejected the same by observing many unwanted and unnecessary things in the impugned order. Hence the following order:

ORDER

- I. The Writ Petition is hereby allowed and disposed of. No costs.
- II. The impugned order dated 18.04.2017 below Exhibit 371 in Special Civil Suit No. 12 of 2000 passed by the Civil Judge, Senior Division, Biloli, is hereby quashed and set aside.

III. The application Exhibit 371 is hereby allowed in terms of its prayer clause.

IV. The Special Civil Suit is pending since 2000. The trial Court is directed to dispose of the said Suit as expeditiously as possible, preferably within a period of six months from today.

(V. K. JADHAV, J.)

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