

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10396 OF 2018
(Shaukat Ali s/o Kudrat Ali and others Vs. Noor Khan s/o Taj Khan
and others)

Mr.B.S.Kudale, Advocate for the petitioners.
Mr.D.P.Deshpande, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/09/2018

PER COURT :

1. The petitioners, who are original defendant Nos. 1 to 3, are aggrieved by the order dated 13/07/2018 passed by the Trial Court, by which application Exh.312 filed by these petitioners seeking amendment to their written statement, has been rejected.

2. I have considered the strenuous submissions of the learned Advocate for the petitioners, have perused the 13 grounds formulated by him and the submissions of the learned Advocate appearing on behalf of respondent No.1 / original plaintiff. With the assistance of the learned Advocates, I have considered the application Exh.312 and the impugned order.

3. The petitioners have placed reliance upon the judgment of this

Court in the matter of Bhimrao Laxman Kamble (dead), through LR's and others Vs. Annaso Dhondiram Manole and another [2018(2) Mh.L.J. 276].

4. These petitioners have proposed a short paragraph by way of an amendment through Exh.312. The contention of these petitioners in the proposed paragraph is that Taj Khan, father of the plaintiff had filed Suit No.21/1975 against Karim Bi. in the Civil Court at Beed. The said suit was dismissed by judgment dated 21/04/1976 and this aspect has been suppressed by the plaintiff.

5. I find that this petition does not deserve to be entertained for two reasons. Firstly, that an issue which would appear to be a part of the arguments of these petitioners is sought to be introduced through an amendment. The proposed amendment clearly appears to be of argumentative character which need not be reproduced in the written statement. Secondly, though Exh.312 runs into 3 pages, not a single sentence is devoted to 'due diligence' in view of the proviso to Rule 17 under Order VI. There is no statement as to why the issue pertaining to the judgment and decree dated 21/04/1976 could not be mentioned in the written statement or as to when did these petitioners secure a copy of the said judgment which gave them the

knowledge about the said legal proceedings.

6. In Bhimrao (supra), this Court concluded that the amendment to Order VI rule 17 would not apply to suits filed prior to the amendment in 2002 and an issue of limitation can always be kept open if an amendment is allowed. I do not find that the said judgment would assist the petitioners considering the facts narrated as above.

7. This petition, being devoid of merit, is therefore, dismissed.

8. It is informed that the suit is posted for final arguments on 24/09/2018. Considering that the suit is pending for 12 years, the litigating sides shall not seek an adjournment on 24/09/2018 and shall conclude their submissions and the Trial Court would endeavour to deliver its judgment in the said suit on or before 30/11/2018.

(Ravindra V.Ghuge, J.)

**Kranti
Hansraj
Shekatkar**

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