

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 WRIT PETITION NO. 9567 OF 2017

MAHEMUDABI SHEKH AAMIN AND ANOTHER
VERSUS
AKBAR BURHAN AND OTHERS

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Advocate for Petitioners : Mr. Tekale Nikhil S.
Advocate for Respondents : Mr.P. P. Patni h/f Mr. P. F. Patni

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CORAM : V. K. JADHAV, J.
DATED : 27th MARCH, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. The petitioners-original plaintiffs have filed an application Exhibit 41 in R.C.S. No. 352 of 2009 seeking amendment in the plaint by way of addition of parties and the consequential amendment in the plaint in tune with the addition of the parties. By the impugned order dated 24.03.2017 passed below Exhibit 41, the trial court has rejected the said application. Hence this Writ Petition.
3. The learned counsel for the petitioners/original plaintiffs submits that by way of the proposed amendment, the petitioners wanted to implead the legal representatives of their own brother

as party defendants to the suit and the consequential amendment in respect of the addition of the said LRs of the deceased brother. The learned counsel submits that the petitioners have instituted the suit for partition and separate possession and the respondents/defendants have raised a specific ground of non-joinder of necessary parties. Even though the trial is commenced, no prejudice is likely to be caused to the defendants by carrying out the amendment as proposed. The learned counsel for the petitioners submits that after rejection of the application exhibit 41, the trial court has closed the evidence of the petitioners/plaintiffs. If this Court allows this Writ Petition, the petitioners may be granted liberty to file an application for adducing their evidence in the light of the amendment, if needed.

4. The learned counsel for the respondents submits that after commencement of the trial, the petitioners have filed the application exhibit 41 and in terms of the proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908, the trial court has rightly turned down the application on the ground that the petitioners have not shown due diligence in carrying out the

amendment before commencement of the trial.

5. The petitioners/plaintiffs have instituted the suit for partition and separate possession in respect of the ancestral property and by way of application exhibit 41, the petitioners have proposed amendment in the nature of addition of the legal representatives of deceased brother of the petitioners as party defendants to the suit. Even though such amendment is carried out alongwith the consequential amendment, which is extremely formal in nature, no prejudice is likely to be caused to the defence raised by the respondents/defendants.

6. In view of the above, I am inclined to allow this Writ Petition. Hence the following order:

ORDER

- I. The Writ Petition is hereby allowed. No costs.
- II. The impugned order dated 24.03.2017 passed below exhibit 41 in R.C.S. No. 352 of 2009 is hereby quashed and set aside.
- III. The application exhibit 41 is allowed in terms of its prayer clause.

IV. The Petitions/original plaintiffs are at liberty to file an application for adducing evidence, if needed, and the trial court may pass appropriate order on it.

V. The Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)

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