

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10661 OF 2018

SHRIHARI TATYABA CHIKANE AND OTHERS
VERSUS
KUSHIVARTA KALINDAR SURVASE AND OTHERS

...
Advocate for the Petitioners : Ms.Doke (Renge) Satyavati K.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th September, 2018

Per Court:

1 The Petitioners/ original Defendants are aggrieved by the order dated 31.07.2018 passed by the Trial Court by which, the application Exhibit 92 filed by the original Plaintiffs seeking amendment in RCS No.482/2012 has been allowed.

2 The Petitioners contend that this is the second amendment that has been allowed. Earlier, an amendment was permitted under the orders of this Court dated 14.12.2015 in Writ Petition No.3415/2015 by imposing costs of Rs.2000/-. The Trial Court had granted the amendment and this Court has enhanced the costs to Rs.2000/-.

3 It is further contended that if two properties were left out from the suit, which is preferred for seeking partition and separate possession, the Plaintiffs should have sought such an amendment when

they were first granted such leave to amend. Negligence and failure to indicate due diligence requires rejection of Exhibit-92.

4 It is further submitted that the amendment has been permitted after the recording of oral evidence has been concluded. An inordinate delay has been caused by the Plaintiffs in moving Exhibit 92 and the Trial Court has mechanically allowed the said application.

5 In my view, it requires no debate that if an amendment is required to avoid adverse impact on the applicant and to avoid multiplicity of litigation, such amendment can be permitted at any stage. However, if laches or oblique motives are attributed to the conduct of the applicant and if a cause of action, which is otherwise barred by limitation, is sought to be introduced, such an amendment need not be permitted.

6 In the instant case, the Plaintiffs have specifically stated in Exhibit 92 that they gathered the knowledge of two more properties, which are required to be put in common hotchpotch keeping in view that the suit is instituted for partition and separate possession. Copies of the PTR were desperately sought for by the Plaintiffs. It is contended that on account of intervention of these Petitioners and influence purportedly exerted on the Gram Sevak, such documents were not made available to the Plaintiffs. After they received the said documents, they have immediately filed Exhibit 92 indicating the existence of two properties which they have discovered, with the contention that these are the

ancestral properties and hence, they prayed for including these two properties in the common hotchpotch in order to solicit a complete adjudication of the rights and claims of the litigating parties.

7 Considering the above, I do not find that the impugned order allowing the amendment by imposing costs of Rs.2000/-, could be termed as being a perverse or erroneous order or likely to cause gross injustice to the Petitioners.

8 This Writ Petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)