

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO. 2986 OF 2017

SHAUKAT MOHD PATHAN AND OTHERS
VERSUS
SALIMA GAFOORBHAI MANIYAR DIED LRS KARIM GAFOOR
MANIYAR AND OTHERS

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Advocate for Petitioners : Mr. V. S. Bedre
Advocate for Respondents : Mr. Joyeb I. Shaikh h/f
Mr. M. A. Jahagirdar

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CORAM : V. K. JADHAV, J.
DATED : 13th MARCH, 2018

PER COURT :-

1. With consent of the parties, heard finally at admission stage.
2. By this writ petition, the petitioners, original defendant Nos. 1 to 8, challenge the order passed by the trial court below Exh.107 & 110 dated 19.09.2016 in R.C.S. No. 139 of 2010. Though application Exh. 110 is rejected by the court, since the common order is passed below Exh. 107 & 110, this writ petition is preferred against the impugned common order.

3. The respondents / original plaintiffs have instituted a suit for partition and separate possession and during pendency of the suit, filed application Exh.107 under Order VI Rule 17 of the Civil Procedure Code, 1908 for carrying out the amendment in the plaint and also filed application Exh.110 purportedly under Order I Rule 10 of Code of Civil Procedure. By common order dated 19.09.2016 below Exh.107 and 110, the trial court has allowed application Exh.107 subject to costs of Rs.1,500/-, however, rejected application Exh.110. Hence, this writ petition.

4. Learned counsel for the petitioners / original defendants submits that the petitioners have filed their written statement in the suit and strongly resisted the suit on various grounds including non-impleading the necessary parties in the suit. Even though, a specific ground is raised about non-impleading the necessary parties in the suit, the respondents / plaintiffs have adduced the oral and documentary evidence and at the fag end of trial of the suit, filed applications seeking amendment in the plaint and also for addition of parties in the suit. Learned counsel for the petitioner submits that so far as the proposed amendment, as mentioned in para 2-a to 2-c of application

Exh.107 is concerned, those are extremely formal in nature and the petitioners have no objection about the said amendment. However, so far as the proposed amendment in terms of para 2-d is concerned, the same has been erroneously allowed by the trial court. Learned counsel in the alternate submits that the trial court has granted only costs of Rs.1,500/- even though the application has been filed at belated stage.

5. Learned counsel for the respondents / plaintiffs submits that admittedly deceased Akbar Mohd. Pathan was from the same family tree and he was necessary party and as such, his legal heirs are required to be brought on record as party defendants in the suit instituted for partition and separate possession. Learned counsel submits that though the trial court has allowed application Exh.107 filed for seeking amendment in the plaint wherein para No.2-d specifically speaks about the legal heirs of deceased Akbar Mohd. Pathan are necessary to be taken on record, rejected application Exh.110 and as such the proposed amendment in terms of para No.2-d would be meaningless. Learned counsel submits that the proposed amendment as well as addition of the parties would not cause any prejudice to the

defence of the petitioners / defendants.

6. On careful perusal of the pleadings and common impugned order passed by the trial court, it appears that the trial court has rightly allowed application Exh.107 seeking amendment in the plaint for the reasons that the proposed amendment in para No.2-a to 2-c are extremely formal in nature and so far as the proposed amendment in para 2-d is concerned, the same would not cause any prejudice to the defence of the petitioners. However, at the same time, when respondents/plaintiffs have filed application Exh. 110 under Order I Rule 10 of CPC, the trial court has rejected the said application. Even though the respondents/plaintiffs have not challenged the order passed below Exh.110. However, it appears that even though the amendment application Exh.107 is allowed, amendment as proposed in para No.2-d would be meaningless if the application Exh.110 is rejected. The respondents / plaintiffs have instituted the suit for partition and separate possession. Admittedly, deceased Akbar Mohd. Pathan was from the same family and as such, his legal heirs are also necessary parties. Even though the petitioners / defendants have raised ground about the non-

impleading of necessary parties in the suit, however, considering the nature of the suit, the trial court has rightly allowed the application Exh.107. So far as the rejection of application Exh.110 is concerned, the same is required to be allowed. Hence, I proceed to pass the following order.

ORDER

- I) Writ petition is hereby partly allowed. No costs.
- II) The impugned common order dated 19.09.2016 passed below Exh. 107 & 110 in RCS No.139 of 2010 by Joint Civil Judge (Junior Division), Rahata is hereby modified to the following effect.
 - a) The application Exh.107 as well as Exh.110 are allowed in terms of its prayer clauses. Rest of the order stand confirmed.
- III) Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

vsm/