

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1058 WRIT PETITION NO. 10077 OF 2013

HANUMANT RAGHUNATH JADHAV
VERSUS
BALIRAM RAGHUNATH JADHAV AND OTHERS

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Advocate for Petitioner : Mr. B. R. Sable
Advocate for Respondent No.4 : Mr. J. R. Patil

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CORAM : V. K. JADHAV, J.
DATED : 9th MARCH, 2018

ORDER :-

1. Heard finally with consent at admission stage.
2. Respondents / original defendant Nos. 4, 12 & 13 have filed an application Exh.117 in R.C.S. No. 409 of 2006, seeking amendment in the written statement under the provisions of Order VI Rule 17 of the Code of Civil Procedure. The petitioner / original plaintiff has objected the said application by filing his say Exh.126. The learned Civil Judge (Junior Division), Majalgaon by impugned order dated 03.12.2013 allowed the said application subject to costs of Rs.2,000/-.
3. Learned counsel for the petitioner / original plaintiff submits that the respondents / defendants have filed an

application Exh.117 when the petitioner / plaintiff filed his affidavit of evidence and the matter was adjourned on 16.08.2013, 10.09.2013 and 05.10.2013 on the applications of defendants. Though the respondents / defendants were having knowledge that in the year 1984, 1994 and 2006 certain properties have been sold out for family need, no averments made in respect of those properties in the original written statement.

4. Learned counsel for the respondents / original defendant Nos. 4, 12 and 13 submits that in the original written statement, particularly in para No.24 it is contended that the petitioner / plaintiff has not mentioned all the ancestral properties deliberately in the suit and sold out certain properties. The respondents / defendants could not get the documents earlier. So after receipts of the requisite information, the respondents / defendants filed the application for the proposed amendment in order to elaborate facts in the written statement. Learned counsel submits that the proposed amendment would not cause prejudice to the plaintiff in any manner and the same is necessary for the just decision of the case.

5. It appears that the respondents / defendants have not introduced any new story and it is their defence in the original written statement that the petitioner / plaintiff has not included the entire ancestral property in the suit instituted for seeking a decree of partition and separate possession. Since the respondents / defendants succeeded in collecting the documents to the effect of alienation of ancestral properties in order to elaborate the same fact, filed application Exh.117 for seeking amendment in the written statement. In any manner, the proposed amendment would not cause any prejudice to the plaintiff.

6. Even though, the petitioner / plaintiff has filed his affidavit of evidence, in a real sense the trial was not commenced. In view of the same, I do not find any substance in the writ petition. Hence, I proceed to pass the following order.

ORDER

- I) Writ petition is hereby dismissed. No costs.
- II) Writ petition is accordingly dispose of.

(V. K. JADHAV, J.)

vsm/