

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 198 OF 2018

SUSHILADEVI PURUSHOTTAM RATHI AND ANOTHER
VERSUS
SURAJBAI @ SURAJKANTA PURUSHOTTAM RATHI AND OTHERS

Advocate for Petitioner : Shri Santosh V. Munde.
AGP for Respondent Nos. 2 to 4 : Shri S.K. Tambe.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 10th January, 2018

PER COURT :

1. The petitioner/original defendant Nos. 5 and 6 are aggrieved by the order dated 06/06/2017, passed by the Trial Court thereby partly allowing Exhibit 59 in RCS No. 14/2015 and permitting the plaintiff to amend the plaint.

2. Learned counsel for the petitioner has strenuously criticized the order. The contention is that the trial Court should not have even partly allowed the application for amendment as the 7/12th extract were within the knowledge of the plaintiff. Despite the same, the plaintiff has not specifically pleaded anything about the 7/12th extract. Order VI Rule 17 and the proviso thereunder would not permit an amendment if due diligence is not established. Learned counsel has drawn my attention to the seventeen grounds formulated by him in the memo of the petition.

3. It needs to be noted that the suit before the Trial Court is at the stage of recording of evidence. When Exhibit 59 was filed, the trial Court in the suit had not commenced. It is well settled that the merits of the proposed amendment are not to be scrutinized while dealing with an application seeking amendment.

4. The trial Court has recorded that the 7/12th extracts were brought on record by the petitioners herein after the filing of the suit. Since, evidence has still not been lead, it is a matter of speculation as to whether the plaintiff had the knowledge of the said 7/12th extract. Exhibit 59 has been partly allowed only to the extent of permitting the plaintiff to amend the plaint to the extent of the subsequent events. Exhibit 59 has been rejected to the extent of the attempt of the plaintiff to identify the biological parents of defendant No. 6.

5. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. The petition being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)