

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1614 OF 2018
(Gangasagar w/o Gulabrao Jadhav and others Vs. Haribhau s/o
Manjuldas Jadhav and others)

Mr.S.V.Kuptekar, Advocate for the petitioners.
Mr.R.D.Bhise, Advocate for respondent Nos. 2 to 7.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 24/09/2018

PER COURT :

1. While issuing notice on 12/02/2018, this Court had passed the following order :-

"1. The petitioners are aggrieved by the impugned order dated 9.11.2017, by which, the trial Court has rejected application Exhibit 113, filed by the petitioners / plaintiffs seeking leave to amend the plaint under Order VI Rule 17 of the CPC. Two sentences running into three lines, with regard to the death of Manjuldas, who is father of defendant No.1, were sought to be introduced and the same has been rejected.

2. Issue notice to the respondents, returnable on 23.3.2018.

3. Copies of the petition paper books shall be furnished for issuance of notice on/or before 20.2.2018, failing which this petition shall stand dismissed without reference to the Court on 21.2.2018.

4. Until the returnable date in this matter, the trial Court shall adjourn RCS No.364 of 2006."

2. I have heard the learned Advocates for the petitioners and respondent Nos.2 to 7. The Advocate for respondent No.1 is absent.

3. I have perused application Exh.113 in which the petitioners / plaintiffs have sought addition of only 2 sentences running into 3 lines in order to place before the Court the fact of the death of Manjuldas, who is father of defendant No.1. The proposed amendment is under paragraph No.3 of Exh.113 in which it is stated that Manjuldas died on 20/01/1995. He had resorted to partition by allotting 1/8th share to Parvatibai and Parvatibai has voluntarily given up the said share.

4. I find that the Trial Court has rejected Exh.113 purely for the reason that the information about the death of Manjuldas is belatedly brought to the notice of the Court. The Trial Court has lost sight of the fact that Manjuldas was the father of respondent Nos. 1 to 5 and either of these persons could have brought to the notice of the Court in their written statement itself that Manjuldas had passed away. As this information was suppressed, that the plaintiff moved Exh.113. Moreover, the proposed amendment neither changes the nature of the suit, nor these plaintiffs have introduced any new prayer based

on the proposed amendment.

5. Considering the above and keeping in view the judgment of the Hon'ble Apex Court in the matter of Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others [2009 (10) SCC 84] and Chakreshwari Construction Pvt.Ltd., Vs. Manohar Lal [(2017) 5 SCC 212], which were not cited before the Trial Court, this petition is allowed. The impugned order dated 09/11/2017 is quashed and set aside and application Exh.113 is allowed. The plaintiffs shall carry out the amendment within 2 (two) weeks from today. They are not required to place on record a freshly typed copy of the amended plaint in view of the judgment delivered by this Court in the matter of Dagu Gangadhar Dongre Vs. Gopinath Mahadu Thore (died) through LR's and others in WP No.9882/2018 vide order dated 28/08/2018 as the amendment can be conveniently included in the plaint in red ink. The defendants are at liberty to file an additional written statement in view of the amendment, if so advised.

(Ravindra V.Ghuge, J.)

Kranti
Hansraj
Shekatkar

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by Kranti Hansraj
Shekatkar
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