

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.1168 OF 2012

Chandrakant Tukaram Bharekar & Anr. .. Petitioners
Vs.
Damu Sitaram Nanaware & Ors. .. Respondents

Mr.A.Y. Sakhare, Senior Advocate a/w Mr.Joel J. Carlos for the petitioners.

Mr.Mandar Limaye for the respondent nos.1 to 9.

***CORAM : R.D. DHANUKA, J.
DATE : 28th August 2018***

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 30th November 2011 passed by the learned Civil Judge, Senior Division, Pune allowing the application for amendment to the plaint filed by the respondent nos.1 to 9 under Order VI Rule 17 of the Code of Civil Procedure, 1908.

2. In the plaint, the original plaintiff has mentioned that one Dagadu Dhondur Mahar died on 31st August 1951. The original plaintiff has also introduced the defendant nos.1 to 5 in the original plaint and as to why they were the legal heirs of the original owners of the property. The original plaintiff, however, made an application for amendment after issues were framed by the learned trial Court in the year 2001 on the ground that there was a mistake in recording those facts in the relevant paragraphs.

3. The said application for amendment was vehemently opposed by the petitioner herein on the ground that various admissions recorded in the said paragraph cannot be allowed to be deleted by carrying out amendment.

4. On 30th November 2011, the learned trial Judge passed an order allowing the said amendment. It is held by the learned trial Judge that the plaintiff is seeking the amendment at very late stage but that itself would not be the ground to reject the application for amendment. The learned trial Judge allowed the amendment subject to the payment of costs of Rs.500/-.

5. Mr.Sakhare, learned senior counsel for the petitioner invited my attention to the unamended plaint and also the amended plaint and would submit that various admissions recorded in paragraph 2 of the original plaint are allowed to be deleted by virtue of amendment granted by the learned trial Judge which was not permissible and more particularly after framing of the issues by the learned trial Judge.

6. It is submitted by the learned senior counsel that his client is one of the legal heirs of the original owner and his client's interest would be seriously prejudiced if the impugned order allowing the application for amendment is not set aside.

7. Mr.Limaye, learned counsel for the respondent nos.1 to 9, on the other hand, submits that the deletion of relevant portion of paragraph 2 of the original plaint would be beneficial to the petitioner. He fairly

points out that the only reason recorded in the application for amendment was that the averments made in paragraph 2 of the plaint were mentioned by mistake which mistake was not intentional.

8. A perusal of the unamended portion of paragraph 2 of the plaint indicates that the original plaintiff has mentioned about the demise of Dagadu Dhondu Mahar, about second marriage of widow of the said Dagadu Dhondu Mahar and about children born out of the second marriage. In my view, these admissions thus could not have been allowed to be deleted pursuant to the application made by the respondent nos.1 to 9 and that also on the ground that there was a mistake. The issues were admittedly framed by the learned trial Judge before filing the said application for seeking amendment to the plaint. The impugned order dated 30th November 2011 passed by the learned trial Judge thus shows perversity and is contrary to the condition prescribed under Order VI Rule 17 of the Code of Civil Procedure, 1908.

9. I therefore pass the following order :-

- (i) The impugned order dated 30th November 2011 passed by the learned Joint Civil Judge, Senior Division, Pune is quashed and set aside.
- (ii) The application for amendment filed by the respondent nos.1 to 9 is dismissed only to the extent of deletion carried out by the respondent nos.1 to 9 and not the entire application. There shall no order as to costs.
- (iii) The learned trial Judge shall dispose of the suit which is pending since 2001 expeditiously.
- (iv) Writ petition is disposed of in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.