

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7242 OF 2016

Mohan s/o Sitaram Mule
& others

Petitioners

Versus

Balaji s/o Pandurang Sakhare
& others

Respondents

Mr. S.S. Deshmukh, Advocate for the petitioners.
Mr. S.P. Urgunde, Advocate for respondents no. 1 and 2.

CORAM : M.S. KARNIK, J.
DATE : 6th August, 2019.

PER COURT :

1. By this petition, the petitioners challenge the order dated 04.01.2016, passed by the learned Civil Judge, Junior Division, Chakur, rejecting the application Exhibit 88 filed by the original defendants no. 9, 10 and 11, for amendment of the written statement.

2. No doubt, the trial had commenced and the evidence was being recorded. However, it came to the notice of defendants no. 9 to 11 that plaintiffs' family is having other properties which are joint family properties and the same are not mentioned in the plaint. By seeking to amend the written statement, defendants no. 9 to 11 wanted to bring on record the details of the properties which are joint family properties of plaintiffs. It is stated that the

same are not brought in the hotpotch only with a view to cause prejudice to defendants no. 9 to 11. It is further averred that by including the properties belonging to defendants no. 9 to 11, the plaintiffs, in collusion, wanted to grab the property which is purchased by defendants no. 9 to 11.

3. The trial Court rejected the application on the ground that the application is belated and that recording of evidence had commenced. According to the trial Court, all the defences are to be raised at an earlier stage and the defence is raised only with a view to prolong the matter unnecessarily.

4. Learned counsel for the respondents supported the impugned order. According to him, the application is belatedly made only with a view to prolong the litigation. He would further invite my attention to the contents of the proposed amendment in as much as, even the property belonging to the wife of defendant no. 2 is sought to be included. He submits that the wife of defendant no. 2 is not even party to the suit.

5. Heard learned counsel for the respective parties. Defendants no. 9 to 11 came out with a plea that there are other joint family properties belonging to the plaintiffs and, these facts are suppressed by the plaintiffs only with a view to cause serious prejudice to defendants no. 9 to 11 and grab the property purchased by defendants. No doubt, recording of evidence has commenced. Considering the nature of amendment, in my opinion, it would be in the interest of justice to allow the amendment with a view to avoid multiplicity of proceedings. The

Apex Court in the matter of Abdul Rehman and another Vs. Mohd. Ruldu and others reported in **(2012) 11 Supreme Court Cases 341** has observed that the object of Order 6 Rule 17 of the Code of Civil Procedure is that the courts should try merits of the case that comes before them and should, consequently, allow all the amendments that may be necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side. It is further held that the main purpose of allowing amendment is to minimise litigation.

6. In this view of the matter, the present petition deserves to be allowed. Considering the nature of proposed amendment, it would be necessary to determine the real question in controversy between the parties. Defendants no. 9 to 11 have stated in the application that it is only at the later stage that it came to their notice about the other joint family properties in possession of the plaintiffs. In any case, delay can be compensated by imposing costs. Learned counsel for defendants no. 9 to 11 in all fairness states that the amount of cost may be paid to the Aurangabad Bar Association Library. In view of this, petition is allowed. Petitioners to pay cost of Rs. 5,000/- to the Aurangabad Bar Association Library within a period of three weeks from today. Order passed by the trial Court below Exhibit 88 is set aside. Application Exhibit 88 is allowed. Amendment be carried out within three weeks from today.

7. The suit is of the year 2007. The trial Court is requested to hear the suit expeditiously and decide the same preferably within a period of one year from today. Learned counsel for the parties

undertake that they won't take unnecessary adjournments and co-operate with the trial Court in disposal of the suit. Writ petition is allowed.

(M.S. KARNIK, J.)

dyb/