

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3829 OF 2016

SAHEBRAO MAROTI PISE
VERSUS
SWATI SAHEBRAO PISE SUNANDA ASHOK TAKLE AND OTHERS

...
Advocate for the Petitioner : Shri Patil Indrale Anand V.
Advocate for Respondents 1 and 2 : Shri Ostwal Abhaykumar D.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 29th April, 2019

Per Court:

1 The Petitioner/ original Defendant No.1 in RCS No.6/2011 (old RCS No.171/2008) is aggrieved by the two orders, dated 30.12.2015 rejecting his application Exhibit 82 and dated 25.01.2016 vide which, his application Exhibit 88 has been rejected.

2 I have considered the strenuous submissions of the learned Advocates appearing for the respective sides. Respondent Nos.3 and 4 have not caused an appearance despite service of court notice.

3 The issue involved in the suit is as regards the partition and separate possession of ancestral properties. The petitioner had earlier moved an application Exhibit 69 seeking an amendment to his written statement. The said application was allowed by the Trial Court. However,

the ground that some of the ancestral properties have been left out by the Plaintiffs and not placed in the common hotchpotch, was not raised.

4 In the above backdrop, the petitioner filed Exhibit 82 on 03.07.2015 seeking addition of an issue as to "*whether, the suit of plaintiff is hit by principal of partial partition and common hotchpotch?*".

5 By the impugned order dated 30.12.2015, Exhibit 82 was rejected as there was no pleading in the written statement that some of the properties have been left out.

6 After Exhibit 82 was rejected, wisdom prevailed upon the Petitioner and he preferred Exhibit 88 on 30.12.2015 immediately after rejection of Exhibit 82. Vide Exhibit 88, it was then prayed that leave to amend be granted so that the petitioner can take up a ground that some of the properties are left out of the common hotchpotch. Exhibit 88 suffered rejection by the impugned order dated 25.01.2016 because Exhibit 82 was rejected.

7 This is a classic case of putting the cart in front of the horse. The petitioner should have first pleaded that some ancestral properties are left out of the common hotchpotch and then should have prayed that the issue as regards the same be cast. Nevertheless, rather than permitting the litigants to proceed with the suit with such deficiency, it would be appropriate to impose costs upon the petitioner and allow the petitioner to take up the said ground. The endeavour of the court should be to permit

all the parties to put forth their entire pleadings unless ulterior motives or laches are attributable to the conduct of any litigant, thereby, causing an impediment in such amendment application.

8 In view of the above, this Writ Petition is allowed. The impugned orders dated 30.12.2015 and 25.01.2016 are quashed and set aside. The applications Exhibits 82 and 88 are allowed.

9 At this juncture, the learned advocate for the original Plaintiffs prays for heavy costs and graciously submits that a portion of the costs may be donated for the treatment of poor patients.

10 Considering the above and the fact that the suit is getting prolonged for a considerable time, I am imposing costs of Rs.15,000/- (Rupees Fifteen Thousand) on the petitioner. Out of the said amount of costs, the petitioner shall deposit an amount of Rs.3000/- (Rupees Three Thousand) as donation for the Ghati Hospital, Aurangabad (Government Medical College and Hospital, Aurangabad), to be deposited with the Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft, to be drawn in the name of "Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad", on or before 10.06.2019 and shall deposit the remaining amount of Rs.12,000/- (Rupees Twelve Thousand) before the Trial Court, on 10.06.2019. Both the plaintiffs shall withdraw the said costs from the Trial Court in equal proportion, unconditionally.

11 The petitioner shall carryout the amendment in the written statement on or before 10.06.2019 and shall also tender a freshly typed amended copy of the written statement on or before the same date.

12 The Trial Court shall add the following issue to the issues already cast :-

"Whether, Defendant No.1 proves that the suit filed by the plaintiffs is rendered untenable on account of any ancestral property having been left out from the common hotchpotch?"

13 Since the litigating sides before the Court indicate that the suit is preferred in 2008 and is 11 years old, that the Trial Court is directed to decide RCS No.6/2011 (old RCS No.171/2008) as expeditiously as possible and in any case, on or before 29.02.2020.