

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

WRIT PETITION NO.4664 OF 2016

CHAGAN SAHEBRAO RAUT
VERSUS
SAHEBRAO NIVERUTTI RAUT DIED LRS HANUMANT SAHEBRAO RAUT
AND OTHERS

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Advocate for the Petitioner : Shri Dhase Rahul P..
Advocate for Respondent 2 : Shri Bhosale Mahesh S.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 10th January, 2019

Per Court:

1 The Petitioner/ original Plaintiff is aggrieved by the impugned order dated 20.01.2016 passed by the Trial Court by which, the application Exhibit 180 filed by Defendant Nos.2, 3 and 5 in RCS No.99/2004 has been allowed and the said Defendants are permitted to amend their Written Statement. Consequentially, after having taken the plea of oral partition, these Defendants are now taking up the plea of written partition deed.

2 Strenuous contention of the Plaintiff is that the Trial Court could not have allowed the amendment after 11 years of the pendency of the suit. Inconsistent stands are being taken by these Defendants and that would be impermissible in law. The trial has commenced in the matter

and the oral evidence has already been recorded and when the matter is at the stage of advancing final arguments that the application Exhibit 180 has been filed.

3 It requires no debate that the proviso below Rule 17 of Order 6 of the Code of Civil Procedure renders the aspect of due diligence significant and important while considering any application for amendment. Unless due diligence is established, such an amendment cannot be permitted.

4 The Trial Court has perused the record available and has found that the written partition deed was never known to these Defendants. They claimed knowledge of the partition on oral information and therefore, continued to canvass oral partition. After they stumbled across the copy of the written partition deed that they moved the application Exhibit 180 seeking amendment to take an additional stand of written partition. The Plaintiff claims that the written partition is a forged document.

5 It is settled law that the merits of the amendment are not to be scrutinized while considering the application for amendment. Whether, the said document is forged or genuine, is for the Trial Court to consider after recording of evidence. I do not find that the plea of written partition would change the entire character of the suit as according to the Defendants, the written partition actually supports their case of oral

partition. It is only that they did not have a copy of the written partition when they preferred their written statement and after receiving such document, they sought amendment to the written statement. It is also well settled that inconsistent stands can be taken by the Defendants in their written statement and an amendment to the written statement is to be considered more liberally.

6 I find that the Trial Court has delivered a well reasoned detailed order and has imposed substantial costs of Rs.4000/- for permitting the amendment. The said order, therefore, cannot be branded as being perverse or erroneous.

7 This Writ Petition being devoid of merit is, therefore, dismissed.

8 Needless to state, since RCS No.99/2004 is more than 14 years old, the Trial Court would decide the said suit expeditiously and in any case, on or before 31.12.2019.