IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7375 OF 2019

Suryakant Bansilal Rana & others Petitioners

Versus

Smt. Hema @ Hemlata Sanjan Rana
and others Respondents

Mr.V.B.Patil, Advocate for the Petitioners.
Mr.Girish Nagori, Advocate for the Respondents No.1 to 3.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 15/07/2019

PER COURT :

1 Learned Advocate for the petitioners submits that Respondents No.4 and 5 are formal parties as they are co-defendants along with the petitioners, who are defendants No.1 to 8 before the trial Court. As such, this petition is taken up for hearing without issuing notice to Respondents No.4 and 5.

2 I find that the petitioners, plaintiffs and original defendants are close relatives. Some are sisters/brothers and original plaintiff no.1 is the mother. The issue is as regards partition and separate possession of certain properties. Regular Civil Appeal

No.1699 of 2012 is pending before the appellate Court for last about 7 years.

3 Vide the impugned order dated 11.01.2019, the appellate Court has ordered that the prayer of these petitioners for seeking an amendment to the pleadings has been rejected and the prayer for leading additional evidence under Order 41 Rule 27 of the Code of Civil Procedure, is kept pending so as to be considered along with the appeal.

4 The issue as regards considering the application for leading additional oral and documentary evidence is now well settled. In view of the judgments delivered by the Hon'ble Apex Court in the matter of **Malayalam Plantations Limited. Vs. State of Kerala & another**, AIR 2011 SC 559, **Union of India Vs. Ibrahim Uddin and another**, (2012) 8 SCC 148, and in the matter of **A. Andisamy Chettiar Vs. A. Suburaj Chettiar**, AIR 2016 SC 791. Such applications are to be considered along with the appeal while it is heard finally.

5 It is quite unfortunate that the close relatives, as

described above, are litigating for small portions of the properties and the married sisters, in view of the amendment to the Hindu Succession Act in 2005, would have certain rights in law. The trial Court should have considered the amendment sought by the petitioners in view of the contention that the amendment was being sought on account of subsequent events.

6 The learned Advocate appearing on behalf of the original plaintiffs has opposed this petition on the ground that the petitioners should have been diligent. After the Hindu Succession Act, 1956, was subjected to an amendment in 2005, it was considered by the learned Full Bench of this Court in the matter of **Badrinarayan Shankar Bhandari & others Vs. Omprakash Shankar Bhandari**, 2014 (5) Mh.L.J. 434; and by the Hon'ble Apex Court in the matter of **Prakash Vs. Phulavati**, (2016) 2 SCC 36.

7 The appellate Court has rejected the amendment on the ground that the amendment need not be allowed as the trial has already commenced and after the commencement of the trial, such an amendment cannot be granted. The learned Advocate for the plaintiffs has contended that the petitioners were obliged to discharge

the burden cast upon them as regards due diligence in view of the proviso below Rule 17 Order 6 of the Code of Civil Procedure. Such burden has not been discharged and as such, the appellate Court has rightly rejected the said application.

8 I find that the appellate Court should keep in mind that the issue involved is as regards immovable properties. No doubt, the amendment appears to be proposed belatedly. However, if the same is rejected or refused, the applicants and especially the sisters, who are likely to have a right to a particular share in view of the 2005 amendment, would be deprived of the same.

9 In view of the above, the impugned order dated 11.01.2019, to the extent of clause (iii) below paragraph 9, rejecting the prayer for amendment, is quashed and set aside. The application Exhibit-11 is restored to the file of the appellate Court in RCA No.1699 of 2012. The litigating sides are at liberty to work out the said application Exhibit-11 along with the main appeal. The appellate Court would consider the same while deciding the main appeal on its own merits.

10 This petition is, therefore, partly allowed in the above

terms.

11 The learned advocate for the plaintiffs submits that the appeal is now listed for final arguments on 19th July, 2019. I find it appropriate to request the appellate Court to place this matter before a trained mediator at the District Court level so as to explore the possibility of a settlement. If the parties are agreeable, two weeks time may be granted for such exercise and the parties may be directed to appear before the mediator on day-to-day basis, if required. If the parties are not agreeable for mediation, the appellate Court would proceed to hear the parties and decide the appeal expeditiously.

(**RAVINDRA V. GHUGE, J.**)

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