

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

15 WRIT PETITION (ST.) NO.13996 OF 2019

DAGADABAI MAKBUL SAYYAD AND OTHERS
VERSUS
FATTUBHAI AHMED SHAIKH DIED THROUGH LRS CHOTANBI
FATTUBHAI SHAIKH AND OTHERS

Mr. Jyoeb I. Shaikh, Advocate for the Petitioners.
Mr. D.R. Adhav, Advocate for Respondent Nos.1 to 3.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : FEBRUARY 09, 2023.

PER COURT :

1. By a separate order passed today in Civil Application No.15111 of 2019, the office objections were directed to be removed within a period of two weeks. Learned counsel for the petitioners submit that the office objections were in fact, removed as the objections pertained to bringing on record the legal heirs of deceased respondent No.1.

2. The petition takes an exception to the order dated 24th January, 2019, allowing the respondent No.2-plaintiff's application for amendment of the plaint. The suit being RCS No.123 of 2013 seeks cancellation of sale deed dated 24th April, 1970, on the ground that the land was Inam land and without the previous sanction of the Government, same could not be executed. In the proceedings, the plaintiff had set out a genealogy of one Fattubhai

Ahmed Shaikh.

3. The trial of the suit proceeded and after the evidence was recorded an application came to be filed at the stage of final arguments on 12th July, 2018, seeking amendment of plaint for the purpose of substituting the genealogy and adding the other branches of the family in the genealogy.

4. Heard learned counsel appearing for the parties.

5. The proposed amendments are in the nature of post-trial amendment, as the matter was posted for final arguments. In case of post-trial amendment, the proviso to Order VI Rule 17 applies and the application preferred by the plaintiff does not set out that the facts proposed to be raised by way of the amendments was not within his knowledge or could not in spite of due diligence be raised before the trial commenced. The proposed amendment shows that the genealogy which is sought to be substituted is for adding the other branches of family and hence it could not be said that the said fact was not within her knowledge at the time of institution of the suit in the year 2013. There is no justification set out in the application for seeking amendment of the claim at such a belated stage and at the stage of the final arguments of the proceedings.

6. The impugned order dated 24th January, 2019 permits the proposed amendment without taking into consideration the

requirements of the proviso to Order 6 Rule 17 and has been permitted on the ground that it is necessary to bring the facts on record before the Court. It is not clear as to how the substitution of the genealogy will assist in deciding the issue which is the cancellation of the sale deed on the ground that it is an Inam land and the prior sanction of the State Government is required. In such a proceeding, all that is required to be proved is the nature the land as the Inam land and the absence of the sanction. In my view, considering the relief sought, the proposed amendment is not necessary for deciding the matter in issue.

7. For the reasons above, the impugned order dated 24th January, 2019 is hereby quashed and set aside. Writ petition stands allowed subject to refund of the costs of Rs.800/- which the learned counsel for the respondents submits has been paid over the petitioners.

(SHARMILA U. DESHMUKH, J.)