

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.10028 OF 2019

Smt. Tanuja w/o Tanaji Chavan
(Dodke) & another

Petitioners

Versus

Balaji s/o Shivdas Chavan (Dodke)
and others

Respondents

Mr.R.K.Ashtekar, advocate for the petitioner.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 13th August, 2019

PER COURT:

1 The petitioners, original plaintiffs, are aggrieved by the order dated 27.02.2019, passed by the trial Court by which the application Exhibit-35 filed by defendants no.1 and 2 seeking amendment to the written statement in RCS No.107 of 2013, has been allowed, subject to payment of costs.

2 The learned advocate for the petitioners has strenuously criticised the impugned order. He contends that the suit has been filed for partition and separate possession. All the litigating sides to the suit are close relatives. The written statement was filed on 16.08.2013 and the application for seeking amendment was filed on 17.10.2018. The issues have been cast

and the plaintiffs have already stepped into the witness box. The due diligence is not explained and the reasons for belatedly filing such an application have not been properly set out. He draws my attention to the averments in the petition and the grounds formulated.

3 I find that the defendants have set out in the application Exhibit-35 at paragraph no.5 that after the plaintiffs tendered the evidence, these defendants realised that the plaintiffs have sold out a particular share of the ancestral property and on the strength of such sale proceeds, have purchased a double storeyed house at Latur, which was unknown to the defendants. It was only after the plaintiffs tendered the affidavit in lieu of examination in chief, that the defendants gathered the knowledge that they have sold 2 hectares and 2 Ares land in G.No.176. Based on these events, the proposed paragraph is set out for amending the written statement so that the said property could be placed in the common hotchpotch. If the said available property is not included in the suit properties, the defendants are likely to suffer an irreparable loss.

4 I do not find that the impugned order could be termed

as being perverse or erroneous or likely to cause injustice to the petitioners.

5 In view of the above, this petition, being devoid of merit, is, therefore, dismissed.

RAVINDRA V. GHUGE
JUDGE

adb/