

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

WRIT PETITION NO.10617 OF 2018

- 1) Shaikh Khaja Shaikh Imam,
Died through his L.Rs.
- 1A) Imamsab s/o Khajamiya Kureshi,
Age : 62 years, Occupation : Agriculture,
R/o Naldurg, Tq.Tuljapur,
District Osmanabad.
- 1B) Shaikh Umar Shaikh Khaja,
Age : 57 years, Occupation : Agriculture,
R/o Naldurg, Tq.Tuljapur,
District Osmanabad.
- 1C) Banubee Khajamiya Kureshi,
Age : 64 years, Occupation : Household,
R/o Naldurg, Tq.Tuljapur,
District Osmanabad.
- 1D) Nasira Yusuf Kureshi,
Age : 58 years, Occupation : Household,
R/o Naldurg, Tq.Tuljapur,
District Osmanabad.
- 1E) Chandsab Khajamiya Kureshi,
Age : 52 years, Occupation : Agriculture,
R/o Naldurg, Tq.Tuljapur,
District Osmanabad.
- 1F) Tahera Aminsab Kureshi,
Age : 48 years, Occupation : Household,
R/o Naldurg, Tq.Tuljapur,
District Osmanabad.
- 1G) Sahera Khajamiya Kureshi,
Age : 42 years, Occupation : Household,
R/o Naldurg, Tq.Tuljapur,

District Osmanabad.

...PETITIONERS
(Orig. Plaintiffs)

-VERSUS-

Kanturam Changdev Jadhav,
Age : 81 years, Occupation : Agriculture,
R/o Mailarpur Laman Tanda, Murta,
Tq.Tuljapur, District Osmanabad.

...RESPONDENT
(Orig. Defendant)

...
Advocate for the Petitioners : Shri Kulkarni Krishna K.
Advocate for the Respondent : Shri Jadhav Vinod B.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 16th April, 2019

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 On 26.09.2018, when notice was issued to the Respondent, I have recorded the submissions of the learned Advocate for the Petitioners/ Plaintiffs as under :-

- "1. The petitioners are aggrieved by the impugned order dated 25.7.2018, by which the trial Court has rejected application Exhibit 183, filed by the petitioners seeking leave to add the L.Rs. of deceased Malanbai.
2. Learned counsel points out that RCS No.199 of 2002 was earlier dismissed by judgment dated 8.7.2011 for non-

joinder of parties. By judgment dated 18.4.2016, RCA No.279 of 2012 was allowed in part and the suit was restored, thereby granting permission to the litigating sides to alter the pleadings and the trial Court was directed to afford fullest opportunity to the litigating sides for leading evidence. In this backdrop, the petitioner had filed application Exhibit 183, seeking addition of the L.Rs. of Malanbai in whose name, the suit property was recorded in the mutation entry No.779, sanctioned on 5.8.2002. Yet the trial Court has rejected Exhibit 183.

3. *Issue notice to the respondent, returnable on 31.10.2018. Until then, the trial Court shall adjourn RCS No.199 of 2002. Hamdast is granted, on request.*
4. *Copy of the petition paper book shall be supplied on/or before 3.10.2018, failing which this petition shall stand dismissed without reference to the Court on 4.10.2018."*

3 Shri Jadhav, learned Advocate for the Respondent/ Defendant, has strenuously opposed this petition. He draws my attention to the proviso below Rule 17 under Order VI of the Code of Civil Procedure. Insofar as the amendment is concerned, notwithstanding the fact that the Petitioner seeks addition of the children of the sole Defendant Kanturam through an application, he contends that the said proviso was introduced in 2002 to the Code of Civil Procedure to ensure that any amendment should not be allowed at a belated stage. This would *mutatis mutandis* apply even to an application for addition of the parties filed belatedly.

4 He submits that RCS No.199/2002 was lodged on

24.10.2002. The Defendant filed the written statement on 15.04.2003 and raised an objection that the suit suffers from non joinder of necessary parties since the wife of the Defendant, Malanbai, has passed away in 1993 and their children have not been arrayed as the defendants in the suit. By judgment dated 08.07.2011, the suit was dismissed. By judgment dated 18.04.2016, the first Appellate Court allowed RCA No.279/2012 and remitted the suit for a retrial before the Trial Court. In spite of the same, the Plaintiff moved the application Exhibit 183 on 13.06.2018 praying for bringing the legal representatives of the deceased Malanbai on record. The Trial Court has considered the above stated sequence of events and has concluded that the suit is at the stage of advancing final arguments and the Plaintiff has belatedly moved the said application. He, therefore, prayed that this petition be dismissed with heavy costs.

5 The learned advocate for the Petitioners/ Plaintiffs submits that it is not too late for considering Exhibit 183. No doubt, there has been latency in filing Exhibit 183. The Plaintiffs are agriculturists and are mainly guided by the legal advice given by the advocate appearing for them. They are not aware about the intricate issues involved in this litigation. They hail from the drought affected region like Osmanabad. If costs are imposed, the Plaintiffs, who are mostly senior citizens, would suffer such costs.

6 I do find from the record that the application Exhibit 183 has

been filed at the fag end of the trial. The recording of oral evidence has also been concluded. Even after the appeal preferred by the Plaintiffs was allowed on 18.04.2016, they have waited for about 02 years and 02 months in filing the application.

7 Notwithstanding the above, it cannot be ignored that this is the only opportunity available to the Plaintiffs to bring the legal representatives of the deceased Malanbai on record. The Plaintiffs apprehend that during the pendency of this litigation, Kanturam, original Defendant, who is about 82 years of age, may have handed over possession of the suit property, which is an agricultural land admeasuring 4 H and 96 R, to his biological children. The suit is for recovery of possession and if Kanturam takes a stand that he is not in possession and those, who are in possession, have not been impleaded as the Defendants, an irreparable damage would be caused to the Plaintiffs as they would lose their agricultural land. They had purchased the said land on 08.09.1958 by registered sale deed executed in the names of the original Plaintiff and his brother-in-law Shaikh Amin and the mutation entry was also carried out on 27.09.1959.

8 In the light of the above, this Writ Petition is allowed. The impugned order dated 25.07.2018 is quashed and set aside and application Exhibit 183 is allowed on the following conditions :-

(a) The Petitioners, seven in number, who are the original

Plaintiffs, shall deposit an amount of Rs.3000/- (Rupees Three Thousand) each, totaling Rs.21,000/- (Rupees Twenty One Thousand), before the Trial Court on or before 07.06.2019.

- (b) After the above costs are deposited, the Defendant (Kanturam) would withdraw the entire amount without conditions.
- (c) Addition of the parties shall be carried out on or before 30.04.2019 and the amended typed copy of the plaint shall be placed on record before the Trial Court on the same date.
- (d) The learned advocate appearing on behalf of the sole Defendant is at liberty to appear on behalf of the added defendants. If he expresses his disinclination to appear, the Trial Court would issue notice to the added Respondents returnable on 14.06.2019.
- (e) After the appearance of the added Defendants, the Trial Court shall proceed with the suit expeditiously and would endeavour to dispose off the same on or before 31.12.2019.
- (f) The added Defendants are at liberty to file their Written Statement and lead evidence, if so advised.
- (g) Any issue of recovery of possession in relation to the added Defendants would be subject to the law of limitation by

keeping in view that the Plaintiffs had filed application Exhibit 183 for seeking an amendment and for addition of the parties, on 13.06.2018.

- (h) All contentions with regard to any issue of limitation would be dealt with by the Trial Court on its own merits.
- (i) If the costs are not deposited, this order shall stand recalled and addition of parties shall not be permitted.

9 Rule is, accordingly, made absolute.

kps

(RAVINDRA V. GHUGE, J.)