

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12690 OF 2018
(Zainabbi w/o Mohd.Bashir and others Vs. Shivkumar s/o Bankatlal
Jaiswal and others)

Mr.H.A.Joshi, Advocate for the petitioners.
Mr.L.V.Sangit, Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 22/01/2019

PER COURT :

1. The petitioners are aggrieved by the order dated 06/08/2018 by which application Exh 121 filed by the plaintiffs, seeking an amendment in the plaint, has been rejected.

2. I have considered the submissions of the learned Advocates for the petitioners and the appearing respondents. Issue is as regards the death of one Tamijbee which is said to have occurred, as per their actual pleadings, in 1975. The parties have proceeded with RCS No.516/2000. There was an occasion for these parties to appear before this Court in WP No.781/2003 filed by these petitioners. By judgment dated 15/09/2017, the said petition was dismissed and the suit was expedited so as to be completed within 9 months.

3. These petitioners moved an application Exh.121 on 03/07/2018 for seeking amendment to the plaint. The foundation of the amendment was that Tamijbee did not pass away in 1975, but has passed away on 30/09/1972. The said certificate is not placed on record. Same is tendered across the bar. The registration of the death of Tamijbee is made on 12/02/1996. Learned Advocate for the plaintiffs admits on the basis of the records that Exhibit 121 filed for seeking an amendment, does not set out the circumstances as regards why was the death of Tamijbee earlier pleaded to have occurred in 1975 and is now sought to be changed. Who moved the Municipality, Jalna for registering her death on 12/02/1996 ? Age of the deceased is shown to be "0" years in that certificate. Address of the deceased is only mentioned as Dist. Jalna.

4. It is in these circumstances that the Trial Court recorded that Exhibit 121 has been filed for retracting earlier statements made and for introducing a new case revolving around the changed date of death of Tamijbee. In the matter of Mahendra Radio and Television, Meerut and another Vs. State Bank of India [AIR 1988 Allahabad 257], it was concluded, in the light of the Law laid down by the Hon'ble Apex Court in the matter of Modi Spg. and Wvg. Mills Co.Ltd., Vs. Ladha Ram and Co. [(1976) 4 SCC 320 = AIR 1977 SC

680] and Panchdeo Narain Srivastava [(1983) 3 SCC 327 = AIR 1983 SC 680], that an amendment to retract a statement made cannot be permitted as it would amount to introducing a new case and displace the opponent completely from the admissions made by the applicant / party.

5. In view of the above, I do not find that the impugned order of the Trial Court could be termed as being perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)