

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

WRIT PETITION NO. 5999 OF 2019

SHAIKH ADAM SHAIKH ABDUL MULANI
VERSUS
HAWABI HUSEN PATHAN AND OTHERS

...
Advocate for the Petitioner : Shri K. R. Doke
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 04th DECEMBER, 2019
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PER COURT :

1. The Petitioner / original defendant No.1 is aggrieved by the order dated 06/09/2018 passed by the Trial Court in Regular Civil Suit No. 302/2015, by which, his application Exhibit 126, has been rejected.

2. Grievance is that he is not permitted to add one sentence in his written statement on the ground that the trial has already commenced and he has belatedly moved the application.

3. I have considered the strenuous submissions of the learned Advocate for the Petitioner. I have gone

through the grounds formulated in the memo of the petition.

4. The record reveals that in paragraph 15 of the written statement, the Petitioner has specifically averred that his father had apportioned the earnings from the suit property and the proceeds of some of the properties that were sold, amongst all the sisters. Defendant No. 4 had also sold some of the properties during the lifetime of Shaikh Abdul, father of the Petitioner. These aspects are known to all concerned with the said litigation. Shaikh Abdul, by apportioning the amount, had actually paid of the shares of the sisters. He had also sold some ancestral property and a house at Indapur and also at Tandalwadi. All the proceeds of such sale were received by Shaikh Abdul and they were distributed amongst the sisters.

5. By the amendment, the petitioner desires to add the sentence that the properties sold are not included in the common *hotchpotch*.

6. I do not find that there would be a requirement for carrying out an amendment since it would be visible before the Trial Court as to whether such sold properties have been included in the common *hotchpotch* or not. So also, the plaintiffs will have to prove that their father Shaikh Abdul was the exclusive owner and possessor of the suit property.

7. Considering the above, I do not find that the impugned order could be interfered merely because a different view could be taken. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-