

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

WRIT PETITION NO.13842 OF 2019

SAYAJI BHIMAJI GORHE AND OTHERS
VERSUS
KACHARU GANPAT GORHE AND OTHERS

...
Advocate for the Petitioners : Shri Suryawanshi Kamlakar J. a/w Shri
L.H.Kawale
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th November, 2019

Per Court:

1 The petitioners/ original plaintiffs in RCS No.187/2009 are aggrieved by the order dated 19.10.2018 passed by the Trial Court by which, the application exhibit 141 filed by the petitioners seeking leave to amend the plaint, has been rejected.

2 The learned advocate for the petitioners has strenuously criticized the impugned order. He points out the nine grounds formulated in the memo of the petition and submits that the Trial Court has erroneously rejected exhibit 141. It is contended that earlier some of the family members preferred RCS No.217/1983. Defendant nos.7 to 10 compromised the said suit by deleting the names of the plaintiffs and obtained the compromise decree by playing fraud. The petitioners did not

get the knowledge of the compromise decree and only during the trial in the suit, they got the said knowledge and hence, moved an application for seeking amendment in the plaint so as to bring in a cause of action against the compromise decree in the 1983 suit.

3 I have considered the petition paper book with the assistance of the learned advocate for the petitioner. It appears from the record that a mutation entry was effected with reference to the suit properties, after the decree was delivered in the 1983 suit. The petitioners contend that they do not have the knowledge as to when were the mutation entries effected. Exhibit 141 does not indicate the circumstances in which, the petitioners have gathered knowledge of the 1983 decree, inasmuch, as they are non committal for self-serving purposes.

4 The record indicates that the compromise decree is dated 19.04.1983 and thereafter, the mutation entries were effected in pursuance to the said decree. It is a matter of circumspection as to how would the plaintiff fail in noting the effect of the mutation entry and did not have knowledge of the said decree for 26 years. The Trial Court has recorded that the plaintiff (Sayaji) has categorically admitted in his examination-in-chief below exhibit 56 that he had knowledge of the compromise decree prior to the filing of the suit. Having so admitted before the Trial Court, the issue would be as to whether, the compromise decree could now be assailed after 36 years being time barred action and

the pendency of the suit for 10 years.

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

kps

(RAVINDRA V. GHUGE, J.)