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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4368 OF 2018

Raghav Bandappa Kemkar
since deceased through LRs.

a) Godabai Raghav Kemkar & anr.

..Petitioners

vs.

Laxmibai Bandappa Kemkar
since deceased through LRs. & ors.

..Respondents

....

Shri Anand Patil I/b. Anand Patil & Asso. for petitioners.

Shri Ajay A. Joshi for respondent Nos.2(a) and (b) and 4.

....

CORAM : M.S.KARNIK, J.

DATE : 30th AUGUST, 2019

P.C. :

As the contesting respondent viz. the original plaintiff is present, the presence of other respondents is not necessary for deciding the present Petition.

2. The petitioners are the heirs of defendant No.1. The plaintiffs had filed the suit for partition and separate possession. Regular Civil Suit No. 726 of 1987 was filed as far back as in the year 1987. Defendant No.1 then filed the written statement.

3. In the said suit issues were framed and even the plaintiffs filed the affidavit of examination-in-chief. The petitioners filed an application below Exhibit 176 seeking amendment to the written statement. The trial Court by the impugned order rejected the application firstly on the ground that the pleas which are sought to be raised by way of proposed amendment are already raised in earlier written statement. The trial Court moreover was of the opinion that the proposed amendments are made after almost 29 years and as the suit is pending for 33 years, the application for amending the written statement deserves to be rejected.

4. Heard learned counsel for the petitioners. Learned counsel invited my attention to the proposed amendments which is more of explanatory in nature. A plea for non joinder of necessary parties is raised. He would submit that by proposed amendment no admission made in favour of the plaintiffs is taken away. He would further submit that he wanted to bring on record the details of the subsequent events like one suit filed by

defendant No.5 and that the suit property in that suit is similar to one in the present proceedings. He would rely upon the decision of the Apex Court in the case of **Andhra Bank vs. ABN Amro Bank N.V. & ors.** reported in **AIR 2007 SC 2511** to support his submission.

5. Learned counsel for the respondents on the other hand invited my attention to the impugned order. He would submit that virtually the same facts pleaded in the written statement filed by defendant No.1 are now sought to be brought on record in a different form by way of the proposed amendment. He would moreover submit that the suit is of the year 1987 and therefore the trial Court rightly rejected the application for amendment.

6. I have gone through the order passed by the trial Court. In my opinion, the order passed by the trial Court calls for interference. By the proposed amendment the heirs of defendant No.1 only wanted to elaborate the defence and take additional pleas in support of their case. It is not the case of the

plaintiffs that the effect of any admission made in favour of the plaintiffs is taken away by the proposed amendment. It is also to be noted that the suit was dismissed in default on 31st October, 2000 and restored only on 3rd December, 2008. No doubt the application for amendment is made when the affidavit of evidence of the plaintiffs was filed. However, as held by the Apex Court, a liberal approach is required to be adopted in the matter of amendment of a written statement. In the present case the nature of the amendment is more of elaboration of the facts already pleaded and some additional plea is taken. The trial has proceeded upto the stage where plaintiffs have filed affidavit of examination-in-chief. Therefore no prejudice would be caused to the plaintiffs if the Petition is allowed. Hence the following order:

ORDER

- i) The Petition is allowed.
- ii) The impugned order is set aside.
- iii) The application Exhibit 176 for amending the written statement is allowed subject to

payment of cost of Rs.5,000/- to the Chief Minister's Relief Fund.

iv) Amendment to be carried out within a period of 2 weeks from today.

v) Considering the suit is of the year 1987, the trial Court is requested to expedite the suit and decide the same preferably within a period of 1 year from today.

vi) The petitioners to co-operate with the trial Court in expeditious disposal of the suit and will not seek unnecessary adjournments.

vii) In case the respondents – original plaintiffs desire, they can move an application before the trial Court for adding necessary parties with the leave of the trial Court. They are also at liberty to file additional affidavit of examination-in-chief in view of the proposed amendments.

7. With these observations, the Petition is disposed of.

(M.S.KARNIK, J.)