

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.376/2015

Vinod Annasaheb Alaragoudar	... Petitioner
V/s.	
Akkatai @ Padmashree Chovgonda	
Pomai (Patil) & Ors.	... Respondents

Mr. Sandeep S. Koregave for the Petitioner

CORAM: K.K. TATED, J.
DATED : JANUARY 30, 2019

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India, the Petitioner challenges the order dated 03.09.2014 passed by the 12th Jt. Civil Judge, Senior Division, Kolhapur below Exhibit- 95 in Regular Civil Suit No. 561/2012 rejecting their Application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 to carry out amendment in the written statement.

2 The learned counsel for the Petitioner submits that in the present proceedings the Respondent Plaintiff filed Special Civil Suit No. 561/2012 for partition and separate possession of the HUF property. He submits that during pendency of the suit, the Petitioner learnt that Defendant No.1 expired and Defendant No.2 renounced the world. Hence, the Petitioner made an Application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for carrying out amendment in the written statement. He submits that the Trial Court has failed to consider the fact that unless and until the legal heirs of Defendant No.1 are brought on

record, there is no question of proceeding with the partition suit on its own merits. He submits that even Defendant No.2 renounced the world. Therefore, there is no question of awarding share in his favour. Therefore, the Trial Court ought to have allowed their Application for carrying out amendment in the written statement. Hence, the impugned order is required to be set aside and allow the Petitioner's Application below Exhibit- 95 for carrying out amendment in the written statement. He submits that if the Writ Petition is not allowed, irreparable loss will be caused to the Petitioner.

3 It is to be noted that the Writ Petition is filed by Defendant Nos.3 and 4. Bare reading of the order dated 03.09.2014 passed by the Trial Court as well as the Application made by the Petitioner for carrying out amendment in the written statement clearly show that the Petitioner - Defendant had failed to give particulars as to when the Defendant No.1 expired, any documentary evidence to that effect and when Defendant No.2 renounced the world. Without any documentary evidence, the Petitioner has made the Application for amendment. Hence, the Trial Court has rightly rejected the Application for amendment in the written statement for want of proof about the death of Defendant No.1 and date of renouncing the world by Defendant No.2.

4 Hence, I do not find any reason to entertain the Writ Petition. Same stands rejected. No order as to costs.

(K. K. TATED, J.)