

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

WRIT PETITION NO.6221 OF 2016

Sanjay Ram Takale & Ors.

...Petitioners

Vs.

Bharati Ram Takale

...Respondent

**Mr. Joel Carlos I/b Mr. S. V. Sadavarte, for the Petitioners
Mr. Himanshu Kode, for the respondent**

CORAM : M. S. SONAK, J.

DATE : APRIL 18, 2019

ORAL JUDGMENT:

1. Heard Mr. Joel Carlos i/b Mr. Sadavarte for the petitioners and Mr. Kode for the respondent.
2. Rule. Rule is made returnable forthwith, with the consent of and at the request of Ld. Counsel for the parties.
3. Challenge in this petition is to the order dated 10/2/2016 by which the petitioners' application at Exh.29 seeking leave to amend the written statement which came to be rejected.
4. From the perusal of the record, it is apparent that application at Exh.29 was made prior to commencement of the trial. The

amendment proposes to raise certain issues in the context of an alleged partition which took place in the year 1970.

5. Mr. Kode, Ld. Counsel for the respondent / plaintiff, points out that the averments which the petitioners seeking by way of amendment in the written statement are false. In any case, he submits that if there was any amount of truth in such averment then nothing prevented the petitioner from stating these matters in the written statement as originally filed. He submits that if the amendment is allowed, then the petitioners would be permitted to withdraw admissions in the earlier written statement to the effect that there was no partition of the ancestral properties. He submits that Ld. Trial Judge has correctly appreciated this position and therefore no interference is warranted with the impugned order.

6. According to me, application seeking leave to amend the written statement prior to commencement of trial have to be liberally construed. The amendment application was made one year after the written statement was filed but well before the commencement of the trial. The reasoning of the Ld. Trial Judge on the aspect of delay cannot be accepted. Leave to amend written statement could not have been denied in such circumstances.

7. Besides, it is clearly not a case where there are admissions originally filed which were sought to be taken away. It is true that the written statement originally filed referring partition in the year 1970, then that does not mean that there was any admission that there was no partition in the year 1970. In any case, so called admissions, can always be explained by amending the plaint. The second reason in the impugned order, therefore, cannot be accepted.

8. In matters of amendment to written statement, the liberal approach is warranted. It is open to the parties to take up even alternate defences. The third reasoning in the impugned order in the context of the petitioners taking different defences, also cannot be accepted.

9. For all the aforesaid reasons, the impugned order is liable to be set aside and is hereby set aside. Leave to amend the written statement as prayed for at Exh.29 is liable to be granted and is hereby granted. Necessary amendment to be carried out within six weeks from today.

10. Although, leave to amend is being granted, it is made clear that all the objections on merits which the respondent / plaintiff may have, to be kept expressly open. The fact that leave being granted does

not mean that even remotely this Court accepted the veracity of the averments which are proposed to be added in the written statement. All contentions of the parties on merits are therefore kept open.

11. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

12. All the concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)