

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13997 OF 2017

Madan Savta Inamke & Ors.	..Petitioners
V/s.	
Bajirao Balku Inamke & Ors.	..Respondents

Mr. Rahul S. Kadam for the Petitioners.
Mr. Sarthak S. Diwan for the Respondents.

CORAM : S.C. GUPTE, J.
DATED : 18th July, 2019.

P.C.

Heard learned Counsel for the parties. Rule. Rule taken up for hearing forthwith by consent of Counsel.

2. This writ petition challenges an order passed by the Civil Judge, Junior Division, Saswad on 28.08.2017. The impugned order was passed on an application of the Petitioners (original defendants) for amendment of their written statement. It was submitted by the Petitioners that the reference to the four properties forming part of the Respondents' suit for partition (properties described in para 1-b), namely, Survey Nos. 282/2, 284/2, 321/1 and 339/2, as having been purchased by Bapu, Parvati, Shripati and Balku under Section 32G of the Bombay Tenancy and Agricultural Lands Act ("Tenancy Act"), was a mistake. This mistake was sought to be corrected by filing the

instant amendment application.

3. The contest between the parties is about whether these properties belong to the Joint Hindu Family of Bapu, Parvati, Shripati and Balku or exclusively to Bapu. The Respondents herein (original plaintiffs) claim the properties through Parvati and Shripati, whereas the Petitioners (original defendants) claim the properties through Bapu. It is the plaintiffs' own case that these properties were in the name of Bapu; since he was the Karta (as the eldest) of the joint family, his name was entered into the record of rights in the column of tenancy. Para 1(b) describes about nine different properties. The plaintiffs claim that though Bapu's name appears in the land records as a tenant in respect of these properties, his three brothers, Parvati, Shripati and Balku, also have tenancy rights in the property. The case of the defendants is that four of these nine properties were brought by way of deemed purchase under Section 32G under certificates of purchase issued under Section 32M of the Tenancy Act; whereas, in the rest of the properties, Bapu had an independent tenancy right; and that his tenancy stands transmitted to his heirs by succession. Whilst setting out this case, through oversight, the defendants referred to an alleged purchase of the property under Section 32G by Bapu, Parvati, Shripati and Balku. The defendants, by their application for amendment, proposed to correct this error. The application was purportedly rejected by the trial court on the ground that it took away an important admission made by the defendants in favour of the plaintiffs.

4. If one has regard to the plaint and the written statement and the certificate of purchase under Section 32M of the Tenancy Act, it is quite clear that the statement that the purchase was in the name of Bapu, Parvati, Shripati and Balku was a clear oversight. The certificate of purchase under Section 32M is exclusively in the name of Bapu. That is not a matter of dispute. If the relevant paragraph where the error has occurred, is read as a whole, it is quite clear that the defendants' case set out therein is that the property exclusively belongs to Bapu and that neither of the three brothers, namely, Parvati, Shripati and Balku, has any share in it. In the face of this case and in the light of the certificate of purchase under Section 32M, it is palpably clear that the reference to the purchase of the property under Section 32G by Bapu, Parvati, Shripati and Balku is a sheer typographical error or oversight. The Court, in the premises, ought to have allowed the defendants to correct the error. There is no admission in the original written statement, read as a whole, which can enure the benefit of the plaintiffs or which is derogated from in the amendment application. The impugned order, accordingly, deserves to be quashed and set aside.

5. Rule is, accordingly, made absolute and the petition is allowed by quashing and setting aside the impugned order dated 28.08.2017 and allowing the Petitioner's application, being Exhibit 134. The amendment to be carried out within three weeks from today.

(S.C. GUPTE, J.)