

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9930 OF 2019

Manoj Chamaplal Lunawat and anr. .. Petitioners
Vs.
Pravin Sham Marwadi @ Kacharawat and ors. .. Respondents

Mr.Sandeep Phatak, for the Petitioners.
Mr.Prathamesh B.Bhargude, for the Respondent No.1.

CORAM : M.S.KARNIK, J.

DATE : 24th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioners.

2. The plaintiffs filed the Suit for declaration and permanent injunction. Defendants No.1 & 2 filed written statement. The trial Court framed issues. After framing of the issues, the matter was listed before the trial Court for enabling the plaintiffs to file affidavit of examination in chief. The plaintiffs filed application under Order VI Rule 17 of C.P.C. for

amendment of the plaint. The plaintiffs by said amendment wanted to bring on record certain transactions which had happened in respect of the suit property prior to the filing of the Suit. These were internal transactions between the members of the family. The trial Court allowed the application for amendment.

3. Learned Counsel for the petitioners would submit that all these facts which are sought to be brought on record by the proposed amendment were in the knowledge of the plaintiffs. There is no due diligence exercised by the plaintiffs. Further in the submission of the learned Counsel for the petitioners that after framing of the issues and when the matter was fixed for filing of the affidavit of examination in chief on 2 to 3 occasions, the plaintiffs filed application for amendment. Learned Counsel for the petitioners would rely upon the decision of this Court in the case of **Jayashree Subhash Kalbande and anr. Vs. Bhaurao Nagorao Derkar and ors. reported in 2014 (4) Mh.L.J. 168** to substantiate his plea of due diligence not

being there on the part of plaintiffs in the matter of filing application for amendment.

4. I have gone through the order passed by the trial Court. After framing of the issues, the plaintiffs had filed application and wanted to bring on record the transactions which occurred between the members of the family. No doubt, the transactions are in respect of matters which have taken place prior to the institution of Suit. The plaintiffs however submitted that all these facts were not brought to the notice of the Advocate appearing on behalf of the plaintiffs. However, during the course of presentation of affidavit of examination in chief when the Advocate for plaintiffs was informed about the transactions which occurred between the members of the family in respect of the suit property, that the application for amendment was made. The proposed amendment does not in any manner change the nature of the Suit. The proposed amendment further does not prejudice the defendants in any manner and defendants would have a right to file additional

written statement to the proposed amendment. I have gone through the order passed by the trial Court. I do not see any reason to interfere with the order passed by the trial Court allowing the application for amendment and that too at the stage when evidence is yet to be recorded. Writ Petition is dismissed with no order as to costs.

(M.S.KARNIK, J.)

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Urmila P. Ingle
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