

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.315 OF 2020

SHARAD KATHTHU MALI AND OTHERS
VERSUS
VASANT KATHTHU MALI AND OTHERS

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Advocate for Petitioners : Shri Pingale D.M.
Advocate for Respondent 1 : Smt. Kazi Sabahat T.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 03, 2020

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PER COURT :-

1. The petitioners / original defendants 1 to 3 are aggrieved by the order dated 1.8.2019 passed by the trial Court, by which, application Exhibit 52 seeking amendment to the Written Statement filed in RCS No.54 of 2016, has been rejected.

2. I have considered the strenuous submissions of the learned Advocates for the petitioners and on behalf of respondent No.1 / original plaintiff, who is contesting the present cause of action.

3. The suit preferred by the plaintiff is for the purpose of partition and separate possession. On 12.3.2019, the matter was posted for final arguments. On 15.3.2019, the plaintiff moved an application seeking leave for production of the revenue entries before the Court. The said application was allowed.

4. The petitioners have preferred Exhibit 52, proposing two large paragraphs to be introduced by way of an amendment. By the impugned order, the trial Court has concluded that the petitioners desire to change the original stand taken. Since a completely different stand is sought to be adopted through the amendment, Exhibit 52 was rejected.

5. It appears from the written statement filed by these petitioners that they have contended that the suit property was subjected to partition and it was allotted to the share of these petitioners. An admission that it was a joint ancestral property and was subjected to partition for the first time. By the proposed amendment, it is sought to be contended that the portion of the suit property in present Gut No.106 was actually purchased by these petitioners and the plaintiff had not contributed in any manner for payment of consideration. It is, therefore, sought to be canvassed that the said property is the independently acquired property of defendant No.1.

6. There is no dispute that a defendant is permitted to take contradictory stands. However, considering the law laid down by the Honourable Apex Court in the matters of Revajeetu Builders and Developers Vs. Narayanaswamy and sons [(2009) 10 SCC 84 = 2009

(8) MLJ 907- (SC)] and Chakreshwari Construction Private Limited Vs. Manohar Lal [(2017) 5 SC 212], a diagonally opposite stand cannot be permitted through an amendment and more so when the suit is at the stage of advancing final oral submissions and the petitioners having made a statement before this Court on 8.1.2020 that they would not lead any further evidence in support of the proposed amendment paragraphs.

7. Considering the above, I do not find that the trial Court has committed an error in rejecting Exhibit 52. The impugned order cannot be branded as being perverse or erroneous.

8. This petition, being devoid of merits, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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