

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

926 WRIT PETITION NO.308 OF 2021

ZAINABBI MOHAMED BASHIR AND OTHERS
VERSUS
SHIVKUMAR BANKATLAL JAISWAL DIED THR LRS KANTABAI
SHIVKUMAR JAISWAL AND OTHERS

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Advocate for Petitioners : Mr. S.S. Patunkar for J. P. Legal
Associates
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CORAM : V. K. JADHAV, J.
DATE : 12.01.2021

PER COURT :-

1. The learned counsel for the petitioners / original plaintiffs submits that after the evidence led by both the parties and the Trial Court has heard the arguments finally, the respondents / original defendants have filed an application Exh.204 for carrying out amendment in the Written Statement. The learned counsel submits that the parties to the suit, first file the pleadings and then led the evidence in consonance with the said pleadings. In the instant case, the Trial Court in the impugned order has observed that the evidence is already led by the parties and in view of the same, the amendment as sought by the respondents / defendants is formal in nature.

2. The learned counsel for the petitioners / original plaintiffs in order to substantiate his contention placed his reliance on following case :

Jayashree Subhash Kalbande and another Vs. Shri.

Bhaurao Nagorao Derkar and others, reported in

2015(1) Bom. C. R. 403.

3. The learned counsel for the petitioners / original plaintiffs has not disputed that the petitioners / plaintiffs have subjected the defendants for cross-examination by referring the documents as referred in the proposed amendment.

4. I am not inclined to entertain this Writ Petition. The respondents / defendants have filed the application Exh.204 for the following proposed amendment in paragraph No.11-A.

Para No.11-A "It is further submitted that after executed of sale deed by said Tameezbee and plaintiff No.02 to 06 fther Bashir registered sale deed bearing No.2040/72 dt.29/12/72 in favour of Surajlal father of defendant. The said Surajlal filed Spl.C.S.No.02/73 before Hon'ble Civil Judge, S.D. Aurangabad against the Tameezbee, Bashir and defendant No.07 & 08 for declaration and possession of suit property and on 22/01/73 parties arrived compromise and filed compromise petition the Hon'ble Court passed compromise decree and said decree was binding to all parties and suit as a res-judiceta. Moreover one third party Haseenabee filed two

civil suit bearing Spl.C.S.No.113/95 and RCS.No.06/00 against defendant's about suit property. In the said judgment Hon'ble Court declared that Shahbegum acquired suit property through civil suit no.665/01 of 1345 fasli and suit property was owned and possess by herself acquired property and it is also declared that suit property are owner possession of defendants. All certified copy of three judgments and decree filed herein for kind perusal."

5. In a case ***Jayashree Subhash Kalbande and another Vs. Shri. Bhaurao Nagorao Derkar and others***, reported in ***2015(1) Bom. C. R. 403*** relied upon by the learned counsel for petitioner, permissibility of the amendment in the written statement has been considered and held that in spite of the knowledge, ignorance by party or an advocate cannot be a matter of due diligence. This Court has referred the observations by the Apex Court to the effect that the degree of the prejudice to the other side by an amendment after commencement of the trial is greater than one at pretrial stage.

In the instant case, in any manner, the prejudice is not likely to be caused to the petitioners / plaintiffs even the amendment sought at the belated stage. In the proposed amendment vide para No.11-A, the factual matrix has brought on record for which the parties have already led the evidence

and placed the documents as referred in the said proposed amendment on the record.

6. In view of the same, I find no fault in the impugned order, when the Trial Court has observed that the other side has availed the opportunity of cross-examination of all the documents referred in the proposed amendment and as such the amendment, if allowed will not cause prejudice to the plaintiffs. Besides, it will not change the colour and nature of the defence raised by the defendants. Even though the proposed amendment has been carried out at belated stage, no prejudice is likely to be caused in any manner to the petitioners / plaintiffs. Hence the following order :

ORDER

(I) Writ Petition is hereby dismissed.

(II) No costs.

(V. K. JADHAV, J.)

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vmk/-