

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4227 OF 2021**

Dilip Shamrao Samant & Ors.Petitioners
V/s
Sou Vijaya B. Maruti Dhanwade
and Ors.Respondents

Mr. Avinash D. Kango for the Petitioner.
Mr. Saurabh D. Butala for Respondent Nos. 1 and 3.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 17, 2021

P.C.:-

1] In a suit for partition and separate possession, application-Exhibit-147 for amendment of the Written Statement moved by Defendant Nos. 6 to 8 came to be rejected vide order impugned.

2] I have heard respective Counsels.

3] Counsel for the Petitioners/original Defendant No.6 to 8 submits that sale of suit property in favour of the Petitioner is a sale of necessity, which is required to be proved by the Petitioners/Defendants and so as to prove such a plea, pleadings remained to be incorporated in the Written Statement-

Exhibit-67. Even if such a plea which is based on legal principle is allowed to be incorporated in the Written Statement, no prejudice is likely to be caused to the Respondents/Plaintiffs and co-defendants. That being so, Court below has committed an error in not permitting the Petitioners to incorporate the amendment.

4] Counsel for Respondent Nos. 1 and 3 would oppose the plea, as according to him, suit is pending since 2012 and attempt of the Petitioners is to prolong the same. It is further claimed that common Written Statement-Exhibit-67 is filed by the Petitioners and since the Petitioner No.1 i.e. Defendant No.6 has examined himself at Exhibit-136, the amendment, as is sought, is with an intention to fill-in the lacunae.

5] I have considered rival submissions.

6] Since the issue about granting amendment to Written Statement, which this Court is deciding is concerning right of Plaintiffs, notice to other Defendant Nos. 1 to 3 is dispensed with.

7] Fact remains that the Petitioners have set up a plea of sale of necessity

and are trying to establish the same as is permissible in law. Considering the burden to be discharged by the Petitioners for proving such issue and the fact that mistake occurred while drafting Written Statement-Exhibit-67 by earlier Advocate who has passed away, in my opinion, case for consideration is made out.

8] As such Writ Petition is allowed. The order impugned passed below Exhibit-147 on November 11, 2019 is hereby quashed and set aside. Application Exhibit-147 stands allowed subject to deposit of costs of Rs 25,000/- in the Court below within four weeks, which Plaintiffs shall be entitled to withdraw. In case if amount of Rs 25,000/- is not deposited within the time stipulated, it will be considered that the Present Petition has been dismissed and the order passed below Exhibit-147 would stand confirmed.

9] Since the suit is pending for almost nine years, hearing of the same is expedited, to be completed within one year from today.

(NITIN W. SAMBRE, J.)