

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 WRIT PETITION NO.943 OF 2018

SUNDAR VITTHALRAO SHINDE AND ANOTHER
VERSUS
SAVITA SURESH SHINDE AND OTHERS

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Advocate for Petitioners : Mr S.B. Choudhari
Advocate for Respondent No. 1 : Mr S.Y. Mahajan

CORAM : SANDEEP V. MARNE, J.
DATE : 2nd DECEMBER, 2022

PER COURT :

1. Petitioners assail order dated 18th December, 2017 passed by the Civil Judge Junior Division, Washi in Regular Civil Suit No. 365/2008 rejecting their application for amendment of the written statement.

2. I have gone through the proposed amendment. The suit is for partition and separate possession. In the amended written statement, the defence of petitioners is that property is not joint family property. By way of amendment, petitioners are seeking to incorporate the details of acquisition of property by defendant No. 1 through various sale deeds. In that view of the matter, it is clear that the stand of the petitioners/defendants in the original written statement as well as in the proposed amendment appears to be consistent. The amendment would not change the nature in reference/written statement.

3. The application for amendment was filed by petitioners/defendants in the year 2017 in a suit which has been pending

since the year 2006. This Court has already directed petitioners to deposit costs of Rs.10,000/- by order dated 23rd January, 2018, which appears to have been deposited by petitioners before the trial court. Therefore, while allowing the amendment, the respondent No.1/plaintiff is required to be compensated, on account of filing of the application for amendment at the belated stage, which has delayed decision of suit. In my view, interest of justice would be subserved, if petitioners are directed to pay compensatory costs of Rs. 20,000/- to the respondent No.1/plaintiff.

4. Accordingly, the writ petition succeeds. The order dated 18th December, 2017 stands set aside and application for amendment by petitioners filed on 04.09.2017 stands allowed in terms of the prayers made therein. Petitioners to pay amount of Rs.20,000/- (Rupees Twenty Thousand Only) to the respondent No.1/plaintiff towards costs. The amount of Rs.10,000/- already deposited by petitioner before the trial court shall be adjusted in that amount. The balance amount of Rs.10,000/- be deposited by petitioners before the trial court within a period of four weeks from today with liberty to respondent No.1/plaintiff to withdraw the same.

5. Since the suit is pending from the year 2006, the trial court shall expedite hearing of the suit and make an endeavour to decide the same as expeditiously as possible and preferably within a period of one (01) year from today.

[SANDEEP V. MARNE, J.]

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