

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5434 OF 2015

Prayagbai W/o Sakharamji Shinde & Anr.

..Petitioner

Versus

Chaya W/o Baburao Shinde and Ors.

...Respondents

Mr. P.S. Agrawal, Advocate for the petitioner.

Mr. A.S. Deshmukh, Advocate for respondents No. 1 to 4.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 26th AUGUST, 2022

ORDER :

1. The petitioners are aggrieved by the order passed below Exhibit-33 in Regular Civil Suit No. 457/2012, by the learned Joint Civil Judge, Senior Division, Parbhani, thereby rejecting the application filed by the petitioners, under Order 6 Rule 17, for amendment.

2. The facts which are not disputed are that, the plaintiffs have filed suit for partition and separate possession to the extent of 1/3rd share in the suit property. The respondents/defendants appeared and resisted the suit by filing written statement. Thereafter in the year 2014 evidence affidavit of plaintiffs was filed. The petitioners before commencement of

their cross examination filed the present application Exhibit-33, seeking amendment in para 8 and 9, proposing the amendment that Gat No. 62 admeasuring 5 Hectare 80 Are to the extent of 2 Hectare 90 R, situated at Pimpla, Parbhani, is wrongly mentioned, instead, it should be 'Gat No. 31 admeasuring 10 Hectare 61 Are to the extent of 2 Hectare 65 Are, situated at Sanpuri, Tq. & Dist. Parbhani'. The amendment was opposed by the defendants contending that the plaintiffs have already entered in the witness box and the trial has commenced. There is total lack of due diligence on the part of plaintiffs in filing the present application. The Trial Court rejected the application holding that there is clear lack of due diligence on the part of the plaintiffs in filing the present application. Since, the trial is commenced in view of proviso to Order 6 Rule 17, application is dismissed.

3. Heard the learned advocate for the petitioners and learned advocate for the respondents. Perused the ground raised in the petition and document filed along with the petition.

4. Admittedly, the suit is filed in the year 2012. The plaintiffs have filed their evidence affidavit in the year 2014 and before the commencement of their cross examination they have

filed present application Exhibit-33. In the written statement, the defendants have specifically averred that the plaintiffs do not have exact knowledge about the nature of property and they are falsely claiming the suit property, which is exclusively the property of deceased Baburao. The defendants have further denied that plaintiff No. 1 has purchased land Gat No. 62 situated at Pimpla and said purchase was effected in the name of deceased Baburao, who was minor at that time. It is specifically averred that Baburao did not hold any agricultural land at village Pimpla. They, therefore, claimed that the property alleged to have been purchased by the deceased Baburao was out of nucleus of joint family.

5. The Trial Court in the facts of the present case was justified in rejecting the application filed by the petitioners, on the ground that there is lack of due diligence and the application is filed after commencement of trial. The written statement is filed by the defendants in the year 2013. Thus, it is clear that the petitioners were aware about the averments made in the written statement.

6. In application Exhibit-33, there is absolutely no averment as to why the said amendment was not proposed at

earlier point of time and it is belatedly filed after the trial has commenced. There is no averment as to when and how the petitioners realized the errors in the pleadings in para 8 and 9. Thus, the application Exhibit-33 is vague.

7. The present petition is filed on 17.11.2014 and is numbered as writ petition of the year 2015. The notices were issued in the present matter on 04.03.2016. Thereafter, the matter was not moved for admission on any point of time.

8. The present position of the suit is that the evidence of the plaintiffs is over and the matter is pending for evidence of the defendants. In these facts and taking into consideration the proviso to Order 6 Rule 17 and in the light of decision in Vidyabai and Ors. v. Padmalatha & Anr. [(2009) 2 SCC 409], this Court is of the opinion that the Trial Court is justified in rejecting application Exhibit-33 filed by the petitioners. No case is made out by the petitioner to warrant exercise of extra ordinary writ jurisdiction. The writ petition is therefore dismissed.

[NITIN B. SURYAWANSHI, J.]