

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11968 OF 2019

Datta s/o Shrirang Lokare

= PETITIONER
(Orig.Deft.No.2)

VERSUS

Krushna s/o Dineshkumar Hedda
and others

= RESPONDENTS
(Resp.Nos.1 to 3
orig.pltiffs &
Resp.No.4 is
orig.Deft.4)

Mr.R.V. Naiknavare, Advocate for petitioner;

Mr.M.B.Kolpe, Advocate for Respondent Nos.1 to 3.

CORAM : PRITHVIRAJ K.CHAVAN,J.

RESERVED ON : 08/03/2022

PRONOUNCED ON : 15/03/2022

PER COURT :-

1. Challenge in this petition is to an order of Civil Judge, Junior Division, Osmanabad dated 9th July, 2018, by which the learned Judge had rejected an application of original defendant No.2 (petitioner herein) seeking amendment in the written statement after commencement of the trial.

2. Relevant facts, essential for disposal of the petition, are as follows, -

a) Plaintiff No.1 and 2 are the sons of

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defendant No.1 and plaintiff No.3 is his wife. The plaintiffs have filed a suit for declaration and perpetual injunction seeking a sale-deed dated 12.3.2010 between defendant Nos.1 and 2 is not binding upon the shares of the plaintiffs since it is an ancestral joint family property.

b) By the proposed application, defendant No.2, who is the purchaser of the suit property viz. Gut No.214 1 hectare and 89 R situated at village Bembli, sought to amend the written statement by incorporating that the suit property was self-acquired property of the defendant No.1 as he was an adoptive son of one Mr. Govindlal Dwarkadas Hedda. In support of his contention, the petitioner-defendant No.2 has placed reliance on a mutation entry No.226, which reveals that defendant No.1 has been adopted by Govindlal Dwarkadas Hedda. Real father of the defendant No.1 viz. Dhondiram Mohanlal Hedda died on 23.12.1987.

c) By the proposed amendment the petitioner has sought to withdraw certain admissions in the written statement and instead seeks to incorporate the following paragraphs, -

"That from this M.E. No.226 the defendant No.1 has succeeded land Gat No.214 admg. 1 H. 89R and 687 Admg. 4H. 75R as an adoptive son and he has succeeded the said property on the basis of adoption deed dated 6.1.1984. Therefore the suit property is also self acquired property of defendant No.1 and he has every right to alienate the same and therefore the plaintiffs have no any right to challenge the said sale deed dt.12.3.2010 in favour of defendant No.2. Further the defendant No.1 has sold out the other property in his name, but the plaintiff have not challenged the said alienation nor included the said property in the present suit and therefore suit is bad for not including whole property in the name of defendant No.1."

"That the defendant No.1 was in need of money for payment of private loan and for household purposes and therefore the defendant No.1 for the above reasons was in need of money and, therefore he has sold the above suit property to the defendant No.2 for a consideration of Rs.4,35,000/- for legal necessity and accordingly the alienation made by defendant No.1 in respect of the suit property in favour of defendant No.2 is for legal necessity. Therefore, the said alienation is binding on the plaintiffs for the members of family of defendant

No.1."

"That, the above proposed amendment is sought and the same is claimed by the applicant after getting the knowledge of succession of the suit property by defendant No.1. Therefore, the same is filed after filing the written statement the plaintiff got the documents and knowledge of the facts of the proposed amendment. The above amendment will not change the original nature of the written statement nor will prejudice to the interest of plaintiffs as they are having liberty to reply the said allegations by supplementary pleadings. The matter is in respect of immovable property. The applicant has invested huge amount for developing the suit property and the valuable rights of the applicants are involved in the present matter. Therefore, it is just and necessary to permit the applicant to amend the written statement as claimed in this application."

3. The law on the point of amendment of written statement has been well settled by various pronouncements. A prayer for amendment of written statement should not be considered with the same rigour and strictness as prayer for amendment of the plaint. It is equally true that the amendments ought to be allowed, which satisfy the two conditions, viz. a) of not working injustice to the other side and b) of being necessary for the purpose of determining the real questions in

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controversy between the parties. The prayer for amendment, clarifying the statement already made, can be allowed and where the statement has been made under a mistake, normally the Court should be liberal in allowing the amendment. It is equally true that the Courts are not supposed to examine merits of the proposed amendment or the defence of the defendants. In this case, it is contention of the petitioner – defendant No.2 that at the time of filing his written statement, he was not aware about the source of succession of the suit property by defendant No.1. He realised the said fact only after getting the knowledge of the record of the revenue department. Though he has admitted in his written statement that it was an ancestral suit property, but due to the disclosure of the new facts from a public document and the old record, it is now clear that the suit property has been succeeded by the defendant No.1 as adoptive son qua Gut No.214 and 686 i.e. the suit property. The law is also settled that a party can be permitted to withdraw an admission if something has been incorrectly stated in ignorance of true facts and the petitioner can be allowed to place true and

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correct facts before the Court through amendment of pleadings.

4. It, therefore, cannot be said that despite due diligence, the defendant No.1 could not have raised the matter before commencement of the trial. The learned Judge in the impugned order has not clarified this aspect and, therefore, the order needs to be interfered with. Consequently, the impugned order is quashed and set aside.

5. The petition is allowed.

6. The petitioner is permitted to amend his written statement within four weeks from the date of passing of the order.

7. After amendment of the written statement, the plaintiffs are at liberty to take necessary steps including amendment in the plaint.

8. The learned Judge shall proceed further with the suit in accordance with law.

9. The petition stands disposed of in aforesaid terms.

(PRITHVIRAJ K.CHAVAN)
JUDGE

BDV

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LATERON ON:

. The amount of costs imposed by this Court by order dated 6th February, 2020 upon the petitioner to show his bonafides, shall be paid over to the High Court Legal Services Sub-Committee, Aurangabad.

(PRITHVIRAJ K.CHAVAN)
JUDGE

BDV