

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2066 OF 2022

Sayyed Latif Nissar Husainsha Fakir

Deceased through Legal Heirs

Sayyad Zakir Latif Inamdar and Ors.

.. Petitioners

Versus

Sayyad Ahmad Nissar Husainsha Fakir

.. Respondent

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- Mr. Kalpesh Patil a/w. Mr. Abhijit Patil, Advocate for Petitioners.
 - Mr. K.K. Jadhav, Advocate for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 19, 2022.

P.C.:

- 1.** Heard Mr. Patil, learned Advocate appearing for Petitioners and Mr. Jadhav, learned Advocate appearing for Respondent at length.
- 2.** Perused the impugned order dated 19.03.2021 passed below Exhibit-17 in Regular Civil Appeal No.342 of 2017. Application taken out by the Petitioner – Original Defendant sought amendment to the written statement filed in Regular Civil Suit No.9 of 2007 dated 26.02.2007.
- 3.** Record indicates that the parties have been litigating since the year 1980. Two earlier Regular Civil Suits between the parties with respect to challenge to the mutation entry and the substantive shares in partition have already been dealt with by the learned Trial

Court. The stand taken by the Petitioners in the written statement dated 17.03.2003 filed in the suit which was decreed by the learned Trial Court was to be effect that the Respondent's share of 22 paisa in 100 paisa was by virtue of oral gift and that stand has been adjudicated by the learned Trial Court. Before the Appellate Court, the Petitioner has come up with a fresh case stating in the year 1972, the father of the Petitioner had in fact partitioned the shares of the respective parties and that the Petitioner would be entitled to 1/8th share and the mother would get 14/64 share.

4. The learned Trial Court after examining the stand taken by the Petitioner in the earlier written statement dated 17.03.2003 as well as the additional written statement filed to the amended plaint dated 26.02.2007 came to the conclusion that the proposed amendment sought by the Petitioner amounted to withdrawal of the admissions made by the Petitioner during the cross-examination and the case put up in the written statement. In that view of the matter, proposed amendment was not only inconsistent with the statement made in the written statement, but also the evidence and the conclusion arrived by the learned Trial Court. The finding returned by the learned Trial Court in paragraph No.10 of the impugned order is that the proposed amendment would not only change the entire nature of the suit but has also the stand taken in the earlier written

statement which is not permissible in law. I agree with the findings returned by the learned Trial Court and it does not call for any interference.

5. Considering that the appeal has been pending since 2017, in the interest of justice the learned Appellate Court is requested to dispose of pending Appeal No.342 of 2017 within a period of three months from today.

6. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]