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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 22 OF 2018
IN
CHAMBER SUMMONS NO. 437 OF 2015

Sakubai W/o Shankar Ghatyal & Ors ...Appellants
Versus
The Standard Chartered Grindlays Bank Ltd & ...Respondents
Ors

Mr Vinod S Pandey, with SU Pandey, for the Appellants.
Ms Dhanashree Gaikaniwari, i/b Baliwala & Co, for Respondent No. 1.
Mr Hemant Haryan, AGP, for the Respondent-State.
Mr SK Dhekale, Court Receiver present.

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CORAM G.S. Patel &
Gauri Godse, JJ.
DATED: 1st August 2022

PC:-

1. The Appeal assails an order of 6th September 2017 dismissing the Plaintiffs' Chamber Summons for amendment. The learned Single Judge concluded that the amendment could not be permitted because what was being sought on record was, in the words of the learned Single Judge "subsequent evidence and documents".

2. The challenge in the Suit is to a consent decree dated 15th January 1970 in Suit No. 54 of 1967. It is too well settled to warrant repetition that a litigant in his or her pleadings needs to plead the facts. No litigant needs to plead evidence. In the pleadings, a foundation must be laid for evidence because, equally clearly, no amount of evidence can make up for the absence of a required fundamental pleading. Now the plaint seems to contain pleadings in support of the Plaintiffs' case that the consent decree dated 15th January 1970 should be set aside. The amendments proposed by the Plaintiffs are seen in the Schedule from page 35 onwards. Each of these proposed amendments relate to one or more pieces of evidence regarding mutation entries, village records, surrender or possession of lands, possession receipts, boundaries and declaration of the land as forest or otherwise. These are all matters of evidence. A copy of the plaint itself is from page 267 of the Appeal paper-book. There are detailed submissions made in the plaint about this very land.

3. It is clear to us that the proposed amendments relate only to evidence to be led or proposed to be led in the Suit. Provided the Plaintiffs make out and are able to demonstrate that there is a sufficient pleading in the Plaint, there can be no prohibition against the Plaintiffs leading such evidence, based on the pleadings, as is necessary to establish the Plaintiffs' case. This would include, again subject to the satisfaction of the trial court, the various matters, documents and assertions in the Schedule to the present Chamber Summons.

4. We see no infirmity in the impugned order. While dismissing the Appeal we only add an observation that notwithstanding the impugned order and the present order of dismissal, it is open to the Plaintiffs to apply to the Trial Court for leave to lead further or additional evidence to bring on record such portions of the amendment as are properly admissible in evidence, and subject to the necessary rules regarding admissibility, relevancy and essential pleadings. This clarification is necessary because the Plaintiffs have already filed an Affidavit in lieu of Examination-in-Chief.

5. The Appeal is dismissed with these observations. There will be no order as to costs.

(Gauri Godse, J)

(G. S. Patel, J)