

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2507 OF 2020

**PRAKASH PRABHAKAR KALE AND ANOTHER
VERSUS
RAMBHAU PRABHAKAR KALE**

...

Advocate for Petitioners : Mr. Vitthal M. Chate

Advocate for Respondent : Mr. K. K. Kulkarni

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 20th MARCH, 2023

PER COURT :

1. This petition challenges order dated 18/12/2019, passed by learned Civil Judge, Junior Division, Dharur, Dist. Beed, below Exhibit-61 in R.C.S. No.46/2014, by which application filed by the petitioners/defendants for amendment of written statement is rejected.

2. Respondent/plaintiff filed suit for partition and separate possession of the suit property. Defendants/petitioners appeared and resisted the suit by filing written statement. Thereafter, trial Court framed issues. Then, application Exhibit-61 is filed for amendment in the written statement on the ground that defendant No.1 is dead and he had 1/3rd share in Survey No.321, which is an ancestral property and the said fact remained to be averred in the written statement. Some requisite documents were not available

with the defendants at the time of filing written statement and therefore, they could not make those statements in their written statement. Hence, they sought permission to amend the written statement.

3. Plaintiff/respondent opposed the application contending that issues are already framed and the matter is kept for evidence. The averments in the proposed amendment ought to have been made in the written statement itself. There is delay in filing amendment application. Hence, the same may be rejected. Trial Court has rejected the application. Petitioner is aggrieved by the said order.

4. Heard learned advocate for petitioners and learned advocate for respondent. Perused the grounds raised in the petition, documents placed on record and the impugned order.

5. Learned advocate for respondent/plaintiff submits that in his say, he has stated that plaintiff had examined three witnesses by that time. According to him, issues were framed in the year 2016 and the application for amendment is filed in the year 2019 and in the meanwhile, three witnesses were examined by the plaintiff.

6. Even if this is the position, fact remains that by way of proposed amendment defendants wanted to contend that defendant No.1 is dead and he had 1/3rd share in Survey No.321, which is an

ancestral property. The said amendment ought to have been allowed by the trial Court in view of the settled legal position that amendment in written statement is to be allowed liberally. No prejudice is likely to be caused to the plaintiff if the amendment is allowed. Amendment would help the trial Court to effectively adjudicate dispute between the parties and it would also avoid multiplicity of the proceedings.

7. After carrying out amendment, if necessary, witnesses of the plaintiff may be further cross-examined in terms of amendment. For lack of due diligence, on the part of defendant, plaintiff can be compensated. For the aforesaid reasons, the impugned order cannot sustain. Hence the following order :-

ORDER

- (I) Writ petition is allowed.
- (II) The impugned order dated 18/12/2019, passed by learned Civil Judge Junior Division, Dharur, Dist. Beed, below Exhibit-61 in R.C.S. No.46/2014, is hereby quashed and set aside.
- (III) Application Exhibit-61 in R.C.S. No.46/2014 is allowed, subject to the petitioners/defendants paying cost of Rs.25,000/- to the respondent/plaintiff in trial Court, within two weeks from today.

(NITIN B. SURYAWANSHI, J.)