

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8589 OF 2022

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AYUB
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Piraji Vithoba Gore & Ors.

... Petitioners

V/s.

Laxman Piraji Gore & Anr.

... Respondents

Mr. Ajay a Joshi, for petitioner.

Ms. Manisha Devkar a/w Mr. Shankar Katkar, for
respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 11, 2023

PC.:

1. By the impugned order, the Appellate Court rejected the application of appellants/original defendants in a suit for partition seeking permission to withdraw written statement filed in a suit and permission to file written statement.

2. The respondent No.1 filed Regular Civil Suit No.403 of 2011 for partition of the suit property. In the said suit, the appellants along with defendant Nos.1 to 3 filed written statement admitting plaintiff's claim.

3. During pendency of the petition, the appellants filed pursis for withdrawal of suit. On an application filed by the defendant No.4, the Trial Court allowed defendant No.4 to be transposed as plaintiff.

4. The Trial Court on 2 January 2015 passed decree in favour of the plaintiff. The present petitioners challenged decree by filling Civil Appeal No.53 of 2018.

5. On 10 December 2019 the appellants filed an application seeking permission to withdraw written statement and seek further permission to file new written statement.

6. The Appellate Court by impugned order rejected the application on the ground that such withdrawal will cause to prejudice to the plaintiff.

7. Learned Advocate for the petitioners submitted that as petitioners are illiterate their signatures on the written statement were obtained by husband of defendant No.4. It is further submitted that the fact of previous partition of suit property was suppressed from the Court and, therefore, the plaintiff was not entitled to decree of partition.

8. On perusal of the record, it is evident that the petitioners filed written statement on 9 December 2011. The Trial Court decreed the suit on 2 January 2015. During pendency of the suit, petitioners did not file such application. It is only on 10 December 2019 after decree having been passed against petitioners, they filed application for permission to withdraw written statement. The question which needs to be adjudicated in the facts of the case is whether the defendant having accepted plaintiff's claim is entitled to withdraw such admission or file application for withdrawal of written statement with permission to file new written statement in Appellate Court. The provisions of the Code

of Civil Procedure, 1908, at its stand, it permits subsequent pleadings only. Subsequent pleading is in the form of additional written statement. Filing of such subsequent pleading is permitted by Order 8, Rule 9 of the Code of Civil Procedure, 1908. The request made by the appellants before the Appellate Court is permission to withdraw written statement with further liberty to file new written statement, is not provided under the Code of Civil Procedure, 1908. Such withdrawal is not permissible, particularly when the defendant admits claim of the plaintiff. Once the plaintiff's claim is admitted, right accrued in favour of the plaintiff. Such accrued right cannot be taken away by withdrawing written statement and filing fresh written statement.

9. Moreover, in my opinion, in absence of the Code of Civil Procedure, 1908 permitting such a course, the appellants before the Appellate Court were not entitled to file such an application. I, therefore, find no legal infirmity in the order.

10. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)