



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
928 WRIT PETITION NO. 13559 OF 2024

Rahul Laxmiprasad Jaiswal & othersPetitioners

VERSUS

Shital Umesh Jaiswal & othersRespondents

Mr. M. M. Patil (Beedkar), Advocate for the Petitioners.

Mr. U. B Bilolikar, Advocate for Respondent Nos. 1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 12th DECEMBER, 2024.

PER COURT :

1. This Petition takes exception to the order passed below Exhibit 87 in Special Civil Suit no. 41/2018 whereby the application filed under Order VI Rule 17 of Code of Civil Procedure for amendment to written statement came to be rejected.

2. Learned counsel for Petitioners submits that the suit filed by Respondents is for partition of the suit properties claiming that the properties are ancestral and joint family properties of Plaintiffs and Defendants. The said suit is opposed by the present Petitioners/original Defendants by accepting the fact that Gat Nos. 42 and 352 are ancestral properties. It is thereafter the Written Statement is sought to be amended by filing application Exhibit 87 to

contend that Gat No. 42 is purchased by Laxmiprasad from Dhondiba Tukaram on 16.01.1978 and Gat No. 352 is purchased by him on 27.06.1973. The learned Trial Court rejected the application on the ground that same is filed at belated stage and that the Defendants want to withdraw admission given in the written statement.

3. Learned counsel for Petitioners/original Defendants submits that merely because a different stand is sought to be taken, it cannot be said that there is automatic withdrawal of admission. It is his submission that the criteria applicable to amendment of plaint and written statement are totally different and that amendment to the written statement needs to be allowed liberally. He drew attention of the Court to the case of Respondents/Plaintiffs wherein they claim right in the suit properties on the ground that the suit properties are ancestral properties. Suit is filed by the daughters of Laxmiprasad. The suit is opposed by Defendants. It is his further contention that the amendment infact would help the Plaintiffs to get the share in the suit properties i.e. Gat No. 45 and 352 since now the Defendants admit that these properties are purchased by their father Laxmiprasad.

4. Learned counsel for Respondents opposed grant of amendment to written statement on the ground that in view of law laid down by this Court in case of Sampat Sandu Dhome and another vs. Khandu Haribhau Dhome and others in Writ Petition No. 12329/2023, it is not permissible for any party to withdraw admission given in the written statement. It is also his submission that the Petitioners/Defendants have failed to show any reason for delay in seeking amendment to the written statement.

5. No doubt, proviso to Order VI Rule 17 of Code of Civil Procedure mandates that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that inspite of due diligence the party could not have raised the matter before commencement of trial. At the same time, relevancy of amendment and adverse effect on the other side become relevant considerations. It is for the Court to decide whether this could be a genuine mistake/miss to plead the facts now sought to be amended or any different version is sought to be brought on record which is adverse to the interest of other side. Here in this case, the Petitioners/Defendants are seeking to amend written statement on the ground of that the subject properties being purchased by their

father Laxmiprasad on the basis of two registered sale-deeds. Registration of said sale-deeds is a matter of fact in itself which can be proved by producing the said documents. Now, question arises before this Court as to whether amendment sought to be effected by the Defendants to the written statement is withdrawal of admission and same is likely to affect the Plaintiffs adversely.

6. The suit is filed by daughters of Laxmiprasad with contention that the suit properties are ancestral properties of Plaintiffs and Defendants. The Defendants wish to oppose the suit on the ground of entitlement of Plaintiffs to receive share therein. Admittedly, parties are Hindus and Section 8 of Hindu Succession Act has application to them. In this scenario their proposed amendment is to be seen. While filing written statement it is stated by Defendants that the ancestral property came to the share of Laxmiprasad. Now, it is sought to be contended on the basis of registered sale-deeds that the properties were purchased by Laxmiprasad. In any case, such amendment to the written statement cannot be said to be adverse to the interest of the Plaintiffs. If now there is admission that these two properties are purchased by Laxmiprasad and in absence of any contention of

parties that Laxmiprasad having bequeathed the said properties to any person, no prejudice will cause to the Plaintiffs by this amendment.

7. In case of Sampat (supra) there was withdrawal of admission which was to adversely affect the Plaintiffs. In the facts of the said case, it was held that it is not permissible for the Defendants to withdraw the admission given in the written statement which are adverse to the interest of Plaintiff.

8. The Hon'ble Supreme Court, in various judgments, has held that amendment to the plaint and written statement stands on different footings. Here in this case, at the most it can be said that the Petitioners/Defendants made submission before the Trial Court as well as this Court about laying hands over the documents in question but not pleaded the same. In the peculiar facts of the case, this Court is of view that amendment sought to the written statement would not affect Plaintiffs adversely and therefore it can be allowed. For reasons to delay, with imposition of cost of Rs. 5,000/- payable to the Plaintiffs.

9. In view of above discussion, Petition is allowed subject to payment of cost of Rs 5,000/- to the Plaintiffs. Impugned order is set aside. Application Exhibit 87 stands allowed. Trial Court to permit amendment to written statement accordingly after ascertaining fact of payment of costs.

10. Learned counsel for both sides seek appropriate direction to the Trial Court for expeditious disposal of the suit. Trial Court is directed to expedite the suit.

(R. M. JOSHI)
Judge

dyb