



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13812 OF 2023

Sayed Ismail Sayed Abdulla And Another

VERSUS

Harichandra Kundlikrao Shirsat Died And Others

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Ms. A. N. Ansari, Advocate for the Petitioner

Mr. A. P. Bhandari, Advocate for Respondents

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CORAM : R.M. JOSHI, J

DATE : JULY 22, 2024

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. This Petition takes exception to order dated 25.08.2023 passed in RCS No. 17/2011 whereby application filed by Defendant for amendment to the written statement under Order VI, Rule 17 CPC came to be rejected.

3. Respondents filed suit for perpetual injunction. Defendants filed written statement on 14.03.2012 and also filed counter claim. After framing of issues, when the examination-in-chief of Plaintiff is filed, an application at Exh. 92 is moved for

amendment to written statement. The amendment is sought in respect of correction in paragraph 2 of the written statement by seeking by deletion of words "admeasure and its boundaries". Similarly, it is sought to be amended that towards northern side the property of Meena Subhash Ajmera. In counter claim, amendment is sought to incorporate name of Devawale instead of Meena Subhash Ajmera indicating owner of northern side property.

4. Learned Counsel for Petitioners submit that in order to decide the issues involved in the suit effectively, the amendment is required. According to her, no mala fides can be attributed to the Petitioners for seeking amendment after commencement of evidence as it is only after realising mistake it can be corrected.

This contention is opposed by learned Counsel for Respondents on the ground that party cannot be permitted to withdraw admissions given in the written statement so also unless due diligence is shown, no amendment can be allowed by the Trial Court.

5. Written statement indicates that there is

admission given therein in paragraph 2 to the extent of the Gut number, its area and boundaries. There is substance in the opposition of Respondents to this Petition that the amendment whereby there is withdrawal of admission is done cannot be permitted. It is settled position of law that the party cannot be allowed to withdraw admissions as the said would cause prejudice to the other side. Hence, rejection of application to the extent of withdrawal of admission, as mentioned in paragraph 2 of the written statement, cannot be faulted with.

6. In the counter claim Petitioners wants to replace the name of the owner of the property towards northern side of the suit property. The description given in the counter claim shows that inadvertently the name of Meena Subhash Ajmera is shown as owner of property on east as well as north side. Apparently, this is inadvertent error and hence, it needs to be corrected. No prejudice will cause to the Plaintiffs if amendment is allowed. It is open for the Plaintiffs to file additional affidavit to oppose the same.

7. In view of the above, Petition stands partly allowed. The application Exh. 92 is partly allowed. Petitioners be permitted to amend counter claim by incorporating name of "Devawale" in place of "Meena Subhash Ajmera" indicating the name of owner of property towards northern side of the suit property.

8. Learned Counsels for both sides submits that suit is of year 2011 and seek direction to the Trial Court to decide the suit expeditiously. As the suit is of year 2011, pending for more than 10 years now, Trial Court is directed to decide the said suit on merits within a period of one year from today.

9. Petition stands disposed of in above terms.

(R. M. JOSHI, J.)

Malani