



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

20 WRIT PETITION NO. 8 OF 2019

Madhav Mhasu Dhokchaule & othersPetitioners

VERSUS

Mhasu Chandrabhan Dhokchaule & othersRespondents

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Mr. S. D. Kotkar, Advocate for the Petitioners.

Mr. R. R. Karpe, Advocate for Respondent Nos. 2 to 4.

CORAM : R. M. JOSHI, J.

DATE : 11th NOVEMBER, 2024.

PER COURT :

1. Heard.

2. This Petition takes exception to the order dated 25.10.2018 passed below Exhibit 49 in Regular Civil Suit No. 98/2015 whereby application filed by Petitioners/original Plaintiffs for amendment to the plaint stood rejected.

3. It is the case of the Petitioners that the suit came to be filed with specific averment that the properties involved in the suit are ancestral properties of Plaintiffs and Defendants however, there is partition effected between them and that each sharer is holding

independent share in the ancestral property. In the light of these facts, declaration was sought that there is already partition effected between Plaintiffs and Defendant Nos. 1 to 6 and injunction is also sought against them.

4. Thereafter, application Exhibit 49 came to be filed for seeking amendment to the plaint under Order 6 Rule 17 of Code of Civil Procedure with the contention that if the Court comes to the conclusion that there is no partition of suit properties, the suit properties be partitioned.

5. The application was heard on merit by the learned Trial Court and by impugned order the same was dismissed on the ground that the permission sought by the Petitioners/Plaintiffs is contrary to the stand taken in the plaint.

6. During the course of hearing, it is brought to the notice of this Court that Defendant No. 7 has filed counter claim and has sought partition of the suit properties. Needless to say that the Plaintiff being the Defendant therein, is having right to raise all his contentions by filing written statement since in the suit for partition.

Needless to say that in case of a suit for partition both Plaintiffs as well as Defendants have equal interest. Practically, Defendants are Plaintiffs too. In the light of the peculiar facts involved on this case b, this Court has expressed its disinclination to cause interference in the impugned order.

7. Learned counsel for Petitioners, seeks withdrawal of the Petition with liberty to file written statement in the counter claim filed by Defendant No. 7. He further prays that all issues and contentions of the parties be kept open.

8. Since there is counter claim filed by Defendant No. 7 for partition of suit properties, interest of the Petitioners/Plaintiffs can be taken care by permitting them to file written statement and by keeping all issues open.

9. Petition is disposed of in above terms.

(R. M. JOSHI)
Judge