

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7610 OF 2014

- 1) Dilip s/o Dhansing Pardeshi (Othawal),
Age: 53 yrs., Occu : Agril.,
R/o Jalke (Bk), Tq. : Newasa,
Dist : Ahmadhnagar
- 2) Sunil s/o Dhansing Pardeshi(Othaw)
Age: 47 yrs., Occu & R/o as above ..PETITIONERS
(Orig. Resp. No: 2 & 3)

VERSUS

- 1) Sandusing s/o Radhakishan Pardeshi,
Age: 69 yrs., Occu: Agril.,
R/o Jalke (Bk), Tq. : Newasa,
Dist : Ahmadhnagar
(Ori. Plaintiff)
- 2) Dhansing s/o Radhakishan Pardeshi,
Age: 84 yrs., Occu: Agril.,
R/o Jalke (Bk), Tq. : Newasa,
Dist : Ahmadhnagar ..RESPONDENTS
(Ori. Deft. No.1)

Mr S. K. Adkine, Advocate for petitioners;
Mr S. V. Natu, Advocate for respondent no.1;
Mr D. G. Kamble, Advocate for respondent no.2;

CORAM : N.W. SAMBRE, J.

DATE : 30th March, 2015

ORAL ORDER :

By the present petition, the petitioners/original defendants no.2 and 3, seek to challenge the order dated 24th June, 2014, passed by 3rd Joint Civil Judge Junior Division, Newasa, below Exh.110, in Regular Civil suit No.106 of 2008, whereby their prayer for amendment of written statement and insertion of counter-claim, came to be turned down.

2. The present petitioners/defendants no.1 and 3, being son and father, entered into a compromise decree in Regular Civil Suit No.315 of 2006, in relation to Gat No.94/02, to the extent of 40 R land on southern side, which property was purchased by respondent no.1/original plaintiff in the present proceedings, by registered sale deed dated 23rd March, 2005. The execution of the sale deed was very much pleaded when the suit came to be filed in 2005 and the said fact was well within the knowledge of present petitioners.

3. Learned Counsel appearing on behalf of the petitioners/defendants no.2 and 3 would urge that the reasons mentioned in the order impugned are not sustainable, as according to him, the counter-claim, which is sought to be put-forth before the Trial Court is a mixed question of facts and law. According to him, the petitioners have every right to adduce evidence in support thereof to prove that the counter-claim is within time. He would further urge that the trial in the suit is yet to begin and as such, if the amendment as sought for is granted, no prejudice will be caused to

the plaintiff.

4. Mr Natu, learned Counsel appearing on behalf of respondent no.1/plaintiff would urge that execution of the sale deed in 2005 was well within the knowledge of the present petitioners-defendants No.2 and 3 as is apparent from the pleadings in paragraph no.1 of the plaint. He would further urge that the limitation for filing a suit for declaration is three years and even presuming that the petitioners got knowledge about the same in 2008, the limitation has expired in 2011, whereas the amendment is sought in 2014.

5. Learned Counsel would further urge that respondent no.2 – father of petitioners has executed sale deed in favour of respondent no.1, to which petitioner no.2 is one of the witnesses and it is really hard to digest that the petitioners were not aware about execution of the sale deed. He submits that the Trial Court has recorded appropriate reasons for rejection of the application. He, therefore, prayed for dismissal of the present petition.

6. An unfortunate case before this Court is, real brothers are fighting for a piece of land, which admittedly appears to have been sold by elder brother to younger brother by a registered sale deed dated 23rd March, 2005, which is admitted position between them , however, disputed by the

petitioners, who are sons of elder brother – respondent no.1 – original defendant No.1.

7. The petitioners and their father have entered into a compromise in a suit for partition and the said decree is sought to be executed against respondent no.1, who is plaintiff in the present suit and younger brother of respondent no.2.

8. Having regard to the pleadings, the only inference that could be drawn is that the petitioners were well aware about execution of the sale deed dated 23rd March, 2005. Once it is established that the sale deed dated 23rd March, 2005 was within the knowledge of the petitioners, the Court below, in my opinion, has rightly proceeded to evaluate as to whether the claim for amendment to written statement and declaration, by way of counter-claim, was within limitation of three years. The learned Trial Court has taken into account both the eventualities, i.e. the execution of the sale deed and the fact about admitted knowledge of present petitioners of date of execution of sale deed.

9. Having regard to the aforesaid facts and considering the catena of judgments, the Trial Court has proceeded to answer the claim of the present petitioners for amendment, so as to insert counter-claim against them.

10. For the foregoing reasons and having regard to the reasons narrated by the learned Trial Court in the impugned order, in my opinion, no perversity, material irregularity or illegality in the order impugned is noticed. Thus, no case for interference in extra-ordinary jurisdiction is made out. Writ Petition, therefore, fails and stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

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