

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No.1145 of 2016

Custodio Joseph Pereira
Died through legal representatives
And Another.

.. Petitioners.

Versus

Prakash S/o. Kanyahalal Khandelwal
And Others.

.. Respondents.

Shri. S.Y. Mahajan, Advocate, for petitioners.

Shri. Tejas Bedre, Advocate, holding for Shri. V.S. Bedre,
Advocate, for respondent No.10.

CORAM: T.V. NALAWADE, J.

DATE : 20 AUGUST 2016

ORDER:

1) The petition is filed by the plaintiffs of Regular Civil Suit No.119/2002 which is pending in the Court of the Civil Judge, Junior Division, Ahmednagar and which is filed for relief of declaration of ownership and injunction. Application filed for amendment of pleadings is rejected by the trial Court. Heard learned counsels for both the sides.

2) The suit is filed in respect of agricultural land bearing No.494/2A (to the extent of area of 81 R) situated at village Kedgaon, Tahsil Nagar. It is the case of the plaintiffs that defendant No.3 and Shridhar sold the suit property to the plaintiffs under registered sale deed dated 3-10-1992. Defendant Nos.4 to 9 are the successors of Shridhar. It is the case of the plaintiffs that defendant No.1 has illegally got entered his name in the record to show that he is owner and so cause of action took place for the suit.

3) It is the case of the plaintiffs that as per their information defendant No.2 has sold 40 R portion of aforesaid number to defendant No.1 by sale deed dated 27-6-1990. It is contended that Special Civil Suit No.399/1992 was filed by defendant No.1 against defendant No.2 and in that suit defendant No.1 has contended that there was agreement of sale of 1 hectare 34 R made on 13-10-1989. It is contended by the plaintiffs that relief is claimed to set aside the sale deed executed in favour of the plaintiffs in the said suit by defendant No.1 as, according to defendant No.1, some portion is

mentioned in the agreement executed in his favour in the year 1989. When such suit was pending, relief of declaration is claimed by the plaintiffs and relief of injunction is also claimed to protect their possession over the property purchased by them.

4) By application Exhibit 77 plaintiffs had prayed for permission to add one party to the suit as defendant viz Smt. Kalawati Darunkar. They have contended in Exhibit 77 that under a decree she has purchased 60 R portion of aforesaid survey number and the said decree was obtained against defendant Nos.2 and 3 and Shridhar. This application is already allowed by the trial Court. It appears that defendant No.10, aforesaid lady, appeared in the suit and filed written statement. It is her case that 60 R portion was given by deceased Shridhar separately and under agreement dated 18-10-1989 Shridhar had agreed to sell this portion for consideration of Rs.15,000/-. It is her case that Special Civil Suit No.31/1987 was filed by her and it came to be decreed on 21-7-1989. It is her case that through officer of the Court sale deed is executed in respect of this portion in her favour on 9-4-1992 in

execution proceeding filed by her and possession of the portion is also handed over to her under sale deed. It is her case that the property purchased by her is different from the property described in the suit. It is her case that the plaintiff has no concern at all with the property purchased by her.

5) Defendant No.10 had filed written statement on 9-9-2014 and then application for amendment under Order 6 Rule 17 of the Civil Procedure Code was filed by the plaintiffs. In the application the plaintiffs contended that only due to the written statement filed by defendant No.10, they learnt about the decree given in her favour and the sale deed executed in her favour. The plaintiffs contended that the Court had allowed them to make said lady party defendant to the suit but through oversight no relief is claimed against the lady in the suit and in view of the stand taken by defendant No.10, the plaintiffs want to claim reliefs like setting aside the sale deed executed in favour of defendant No.10 in the execution proceeding. They want to contend that Shridhar had no authority to sell the portion of 60 R which is sold to defendant No.10.

6) The trial Court rejected the application of the plaintiffs by holding that while filing application at Exhibit 77 plaintiffs knew that defendant No.10 has concern with the suit property and so they ought to have made contention in the amendment application and they ought to have prayed for additional relief as against said lady, who was to be added as party defendant. The reason is given that such contentions were not made in the previous amendment application, Exhibit 77, and so the amendment cannot be allowed.

7) The aforesaid contentions and the circumstances show that the plaintiffs wanted to prove that they purchased the property on 3-10-1992. As against this, they admit that in favour of defendant No.10 the property was sold under decree on 9-4-1992. The suit was filed by respondent No.10 in the year 1987 and it was on the basis of agreement dated 18-10-1982. On one hand, plaintiffs have contended that they have also purchased the suit property from Shridhar and defendant No.3 and defendant No.2 had given consent to the transaction and on the other hand they want to contend by making

amendment that Shridhar had no authority to sell the property to defendant No.10. It appears that the decision given in favour of defendant No.10 in the aforesaid suit was not challenged by defendant Nos.2 and 3.

8) The plaintiffs have claimed relief of declaration of their ownership on the basis of sale deed executed in their favour subsequent in time. Persons who could have challenged the sale deed executed in favour of defendant No.10 like legal representatives of Shridhar or defendant Nos.2 and 3 have not challenged the said sale deed or the decree. In view of these circumstances it can be said that nothing can be achieved by allowing the plaintiffs to make the aforesaid amendment. Thus, there are no merits in the present proceeding. In the result, the petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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