

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

WRIT PETITION NO. 1718 OF 2016

Shivram Tukaram Gundre

..PETITIONER

VERSUS

Shrimant Tulshiram Biradar and Another

..RESPONDENTS

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Mr. A.N. Sabnis, Advocate h/f Mr. V.D. Gunale, Advocate for petitioner.

Mr. A.V. Patil, Advocate for respondents.

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CORAM : T.V. NALAWADE, J.

DATED : 04th OCTOBER, 2016

ORDER :

1. The petition is filed to challenge the order made by the Civil Judge, Junior Division, Devni on Exhibit 76 in Regular Civil Suit No. 321 of 2008. The application was filed under the provision of Order 6 Rules 16 and 17 of the Code of Civil Procedure by the plaintiff for amendment of plaint. The application is rejected by the Trial Court. Both sides are heard.

2. The suit is filed by present petitioner for relief of declaration. The relief claimed in the plaint is as under:-

“set aside the sale deed dated 20th April, 2000 in respect of

the suit property and hand over the possession of the suit property to the plaintiff.”

For getting this relief, the plaintiff has contended that he executed sale deed on 20th April, 2000 but it was only by way of security in respect of the amount of Rs.50,000/- taken by the plaintiff by way of loan and the sale deed was not to be acted upon. It is the case of the plaintiff that inspite of such agreement, the defendant got his name entered in the revenue record on the basis of registered sale deed and he forcibly dispossessed the plaintiff from the suit property. Thus in respect of the sale deed of the year 2000, the suit for setting aside the sale deed was filed in the year 2007.

3. In the amendment application, the plaintiff has prayed for adding other reliefs as under:

“It be declared that plaintiff is the owner of the suit property. It be declared that sale deed dated 20th April, 2000 is sham as it was executed by way of security in respect of loan taken. It be declared that there is redemption of transaction. Direction be given to the defendant to execute re-conveyance deed in favour of the plaintiff.”

4. The aforesaid nature of relief which the plaintiff wants to add by way of amendment, will change the nature of the suit. It was submitted that eight witnesses are examined by the plaintiff and after that such application was moved on the ground that previous Counsel has not claimed the relief due to oversight.

5. Even if aforesaid amendment which is sought is considered, it can be said that the said amendments will also not help the plaintiff in any way. On one hand the plaintiff wants to show that it was the mortgage transaction but he wants declaration from the Court that it is already redeemed but no registered document executed in his favour. On the other hand he wants relief of re-conveyance. There will be point of limitation also and so this Court holds that entire nature of the suit will change.

6. The learned Counsel for petitioner placed reliance on case reported as (2006) 4 SCC 385 (Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others) and submitted that merits of the case cannot be gone into at the time of consideration of the amendment application. It is true that merits cannot gone into, but the fact remains that entitlement of plaintiff to amend the plaint and claim some relief to give go by to

limitation can be definitely considered. The facts of this reported case shows that due to some events which took place during the pendency of the matter, amendment was sought and so the Apex Court held that the amendment was necessary and it was not changing the nature of the suit. The facts of the present matter are different.

7. The learned Counsel for respondent places reliance on two cases reported as **2015 (1) Bom.C.R. 403 (Jayashree Subhash Kalbande and Another Vs. Bhaurao Nagorao Derkar and Others)** and **2016 (2) Bom.C.R. 399 (Antonio Braganza and Another Vs. Antoneto John D'Souza and Another)** and submits that due diligence was not shown. There is force in the submission of the learned Counsel for respondent that due diligence was not shown. There are other circumstances also which are quoted. This Court holds that it is not a fit case where interference is warranted. In the result, petitions is dismissed.

(T.V. NALAWADE, J.)

SSD