

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6202 OF 2015

SHANKAR NANA SHINDE
VERSUS
PRITESH VIJAY SHINDE AND ANOTHER

...
Advocate for Petitioner : Mr. Sawant Amol S.

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CORAM : V. K. JADHAV, J.
DATED : 6th JANUARY, 2016

PER COURT:-

1. By way of filing present writ petition, the petitioner is challenging the order dated 20.01.2015, passed by the C.J.J.D. Sakri, below Exh.37 in Regular Civil Suit No. 168 of 2012, whereby the application filed by the petitioner/plaintiff under Order VI Rule 17 of C.P.C. for amendment is rejected.

2. Learned counsel for the petitioner submits that there is pleading to that effect in the plaint that on the basis of sale deed executed in the year 1982 in favour of petitioner, the petitioner became owner and is in possession of suit property. Learned counsel further submits that there is no substantial change in the nature of suit since by way of proposed amendment the petitioner is seeking relief for declaration of ownership. Learned counsel places reliance on judgment of this court in the case of **Kamlesh**

Jagannath Suryavanshi vs. Kalyan Shishir Kumar Dutta and another, reported in 2013 (6) Mh.L.J. 193, wherein this Court, relying upon the judgment delivered by the Supreme Court in the case of ***Pankaja and another vs. Yellappa and others, reported in 2004 (4) Mh.L.J. (SC) 488***, held that the amendment to pleadings must be allowed to render substantive justice between the parties.

3. Though the respondent is duly served, remained absent.

4. On perusal of copy of plaint, it appears that there is specific pleading about title of property and possession of the petitioner over the suit property on the basis of sale deed executed way back in the year 1982. On the basis of rival pleadings of the parties to the suit, issues are framed and particularly issue No.3 is about acquisition of title of suit property by the defendant by way of adverse possession. It is true that the plaintiff has filed application at belated stage for which other side can be compensated by way of costs. However, in the light of pleadings and the issues framed, in order to do substantive justice between the parties, in my considered opinion, proposed amendment is required to be allowed. Hence, the following order:-

ORDER

- I. Order dated 20.01.2015 passed by Civil Judge, Junior Division, Sakri, below Exh. 37 in Regular Civil Suit No. 168 of 2012 is hereby quashed and set aside.
- II. The application Exh.37 is allowed subject to payment of costs of Rs.2000/- to be paid by the petitioner to the respondents, within two weeks from today before the trial court.
- III. Writ petition is disposed of. No costs.

(V. K. JADHAV, J.)

rlj/