

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4740 OF 2015

PANDURANG GANGARAM WARE
VERSUS
SAHEBA SAWALERAM KEDAR AND ANOTHER

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Advocate for Petitioner : Mr. Satyajit S. Bora
Advocate for respondent Nos. 1 and 2 : Mr. R. B. Dhakane

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CORAM : V. K. JADHAV, J.

DATED : 02nd FEBRUARY, 2016

PER COURT :-

1. By consent of learned counsel for respective parties, heard finally at admission stage.
2. By way of this writ petition, the petitioner/original plaintiff is challenging the order dated 10.03.2015 passed by Civil Judge Junior Division, Shirur Kasar, District Beed, below Exh.22 in Regular Civil Suit No. 33 of 2011, thereby rejecting the application filed by petitioner/plaintiff under Order VI Rule 17 of the Code of Civil Procedure for carrying out amendment in the pleadings.
3. Learned counsel for the petitioner/plaintiff submits that the petitioner/plaintiff, in cross-examination, has given an admission that he has lost his possession and as such, the suit for declaration of title will not do complete justice. Learned counsel submits that by adding

prayer for recovery of possession, nature of the suit is not going to be changed. There is no impediment as such, in allowing the application for amendment and no prejudice is likely to be caused to the other side.

4. Learned counsel for the respondents/original defendants submits that during cross-examination, the petitioner/plaintiff gave certain material admissions and at a belated stage, the petitioner/plaintiff is seeking relief of recovery of possession by way of filing application Exh.22 for carrying out amendment in the pleadings. Petitioner/plaintiff has not given any explanation as to why the application was not filed before commencement of trial. Learned counsel submits that the trial court has rightly rejected the application and no interference is called for in the impugned order.

5. It appears from the pleadings that the petitioner/plaintiff has restricted his claim for declaration of title to the extent of 20 gunthas of land out of land survey No. 171/2/B/5. As per pleadings of the petitioner/plaintiff, he had purchased 4 acres of land under registered sale deed in the year 1982 from the original owner namely Indubai Raghunath Ware. Thereafter, in the year 1986, the petitioner/plaintiff has sold 20 gunthas of land out of the said land ad-measuring 4 acres to respondent/defendant No.1 for the purpose of erecting cattle

shed. It appears from the pleadings of the parties that said Indubai and her sister Kausalyabai inherited the property possessed by their deceased father Raghunath Ware. They had equal share in the land Survey No.171/2/B/5 ad-measuring 4 acres. After death of said Raghunath Ware, Kausalyabai also died leaving behind one Pralhad Hira Sanap as her legal heir. He was minor at the time of death of Kausalyabai. Even though said Indubai was the owner in possession of 50% (eight aane) of share in the said land ad-measuring 4 acres, in collusion with the revenue authorities, she got mutated the entire land ad-measuring 4 acres out of said survey number in her name and accordingly, sold the said land of 4 acres to the present petitioner/plaintiff. Subsequently, after attaining age of majority, said Pralhad Hira Sanap instituted a suit for partition and separate possession to the extent of 50% (eight aane) share belonging to his deceased mother Kausalyabai. The said suit was decreed in terms of prayer clause and accordingly, in the execution proceedings, said Pralhad Hira Sanap got 2 acres of land out of 4 acres land sold to the petitioner/plaintiff.

6. According to the petitioner/plaintiff, the said 20 gunthas of land, which was sold to respondent/defendant No.1, is a part of the land allotted to the share of said Pralhad Hira Sanap in execution of the decree. However, respondents/defendants contend that

respondent/defendant No.1 purchased 20 R of land under registered sale deed for a valuable consideration and accordingly, the mutation entry 1331 came to be sanctioned. They are in possession of the said portion of land as an owner thereof. They have constructed a cattle shed along with a residential house in the said portion.

7. In the light of these rival pleadings, the petitioner/plaintiff, only on the basis of certain admission given in the cross examination, sought amendment in the pleadings. The petitioner/plaintiff has not produced on record the documents in support of his contention. Therefore, it is not clear as to whether the land sold to respondents/defendant No. 1 is a part of the land allotted to said Pralhad Hira Sanap in execution of the court decree. Had it been the case, then respondents/defendants would have raised objection in the said execution proceedings. In view of this, I find no fault in the impugned order. Learned Judge of the trial court has rightly rejected the application. No interference is called for. The writ petition is hereby dismissed. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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