

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8634 OF 2013

Murlidhar Dattatraya Kulkarni,
Age 55 years, Occ. Agriculture,
R/o Kawsan now at Nath Galli,
Paithan, Tq. Paithan,
District Aurnagabad.

..Petitioner

Versus

1. Waman Dttatraa Kulkarni
Age 60 years, Occ. Agriculture,

2. Sunil Waman Kulkarni,
Age 35 years, Occ. Agriculture,

3. Pralhad Waman Kulkarni,
Age 30 years, Occ. Agriculture,

All R/o Nath Galli, Paithan,
District Aurnagabad.

..Respondents

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Advocate for Petitioner : Shri Joshi M.D.
Advocate for Respondents : Shri Bangar Ravi

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 11, 2016

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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. This Court by its order dated 17.10.2013 had stayed RCS No.15 of 2010, while issuing notice to the respondents.

5. I have heard the learned Advocates for the respective sides for quite sometime. Issue is with regard to an amendment under Order VI Rule 17 of the Code of Civil Procedure, so as to incorporate the proposed amendment in the Written Statement. Same has been allowed by the order dated 30.8.2013.

6. Grievance is that the amendment should not have been permitted after the respondent / plaintiff had closed his oral evidence. There is no pleading on the ground of due diligence. Though the proposed amendment may not change the nature of the suit, same is not required as the trial Court can suo-moto look into whether the suit is barred by limitation or not. For the said purpose, an amendment for specific pleading was not required as the issue of limitation is squarely a legal issue, coupled with the fact of the date of cause of action and the date of filing of the suit, which can be looked into by the trial Court in accordance with law. It is, therefore, prayed that the impuned order be quashed and set aside.

7. Learned Advocate for the respondents submits that the proposed amendment is with regard to the cause of action. If the suit is not within limitation, the trial Court would lose jurisdiction. Even if the defendants do not raise this issue, the trial Court can itself consider the aspect of limitation and can decide the same.

8. It is further contended that this Court had granted leave to the respondents to file an application for amendment by its order dated 16.11.2009 in Writ Petition No.5728 of 2009. It is, therefore, prayed that the petition be dismissed.

9. I have considered the submissions of the learned Advocates.

10. It is settled law that an amendment to a Written Statement is to be looked at more liberally than an amendment sought in the plaint / suit or complaint.

11. Though this Court granted leave to the respondents on 16.11.2009 to file an application for amendment, same has been filed by the respondents after 13 months on 16.12.2010. No explanation is put forth as to why this delay was caused. There is no pleading as regards due diligence. Issues have been recast on 20.7.2006. Issue of limitation is not framed.

12. Considering the above, the trial Court could have imposed costs upon the defendants while passing the impugned order and permit them to carry out the amendment.

13. In the light of the above, this petition is partly allowed. The respondents are permitted to amend their written statement only in accordance with the proposed amendment within a period of three weeks

from today.

14. So also, the respondents shall pay costs of Rs.10,000/- (Rs. Ten Thousand only/-) to the petitioner by depositing the said amount before the trial Court within three weeks from today. The petitioner / plaintiff would be permitted to suitably amend the plaint only to the extent of countering the amended portion of the written statement, within three weeks after the amendment is carried out. Needless to state, the plaintiff is permitted to lead additional oral and documentary evidence, if so advised.

15. Rule is made partly absolute in the above terms. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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akl/d