

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

5 WRIT PETITION NO. 9699/2014

KACHRU GOVINDRAO APSHINDE & ANOTHER
VERSUS
ANANT DAGDUPANT KHILLARE

Shri. F.R. Tandale Advocate, for petitioners.
Shri. P.V. Mandlik, Senior Counsel, instructed by Shri. A.S.
Gandhi, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 29 AUGUST 2016

ORDER:

1) Writ Petition No.9699/2014 is filed to challenge the order made on application filed for amendment, Exhibit 25, by the plaintiffs (Kachru and his son Anna) of Regular Civil Suit No.130/2012. It appears that amendment sought to correct the boundaries of the suit property is allowed but the other amendments sought as follows are rejected :-

"That Dnyaneshwar, brother of Anna has made false affidavit to support the case of the purchaser, Anant Khillare and that can be shown on the basis of the contentions made by Dnyaneshwar in Regular Civil Suit No.72/2011 and that false affidavit was got prepared by Anant from Dnyaneshwar".

In respect of aforesaid contention it can be said that if this fact was within knowledge of the plaintiffs, Anna and Kachru then they ought to have made pleadings in the suit. Strictly speaking it can be said that there is no such pleading in the plaint of Anna and if Anna wants to examine Dnyaneshwar as witness, this circumstance can be confronted to Dnyaneshwar by his brother Anna. The trial Court has referred to provisions of Order 6 Rule 17 of the Civil Procedure Code though it is not quoted to show that after starting of the trial, amendment ordinarily is not to be allowed if there was no due diligence shown by the party seeking amendment. In view of this, this Court holds that the trial Court has not committed any error in rejecting the aforesaid amendment.

2) The petitioner also wants to mention that the real value of the property, market value as per ready reckoner was Rs.44,900/- but the consideration of Rs.31,000/- is mentioned in the sale deed. It is a matter of evidence to show that it was not real transaction, out and out sale. In the plaint itself Anna and his father have contended that the defendant Anant is money lender and

loan of Rs.17,000/- was taken from him and by way of security, sham document was executed. In view of these pleadings there was no necessity of making such amendment. This amendment was misconceived and so the trial Court has not committed error in rejecting this part of the amendment also.

3) The other amendment which was sought was in respect of the entry made in the revenue record. It can be said that argument can be advanced on the basis of law developed in respect of the weight which can be given to the revenue entry and there is no necessity to mention in the pleadings anything about the revenue entry in the way in which the plaintiffs want to mention in the plaint by making amendment. Due to this reason, this Court holds that there was misconception and due to that such amendment was sought. This Court holds that such amendment could not have been allowed and the trial Court has not committed error in rejecting aforesaid amendment. The writ petition stands dismissed.

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

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