

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10719 OF 2012

1. Shanti Ramesh Galani PETITIONERS
Age – 56 years, Occ – Business
W/o Ramesh P. Galani,
No.10, Saptrshangi Colony,
Maleria Office, Sakri Road,
Dhule

At present Block No.P-2, Room No.8/9,
Kumarnagar, Sakri Road, Dhule

2. Kum. Bharti Ramesh Galani,
Age – 31 years, Occ – Nil
R/o As above
3. Bhaat Ramesh Galani,
Age – 26 years, Occ – Business,
R/o As above
4. Sau. Jyoti Arun Bhatiya,
Age – 35 years, Occ- Nil
R/o As above

VERSUS

1. Anandibhai Mohanjibhai Bhesniya RESPONDENTS
(Died) LRs.

- 1A. Dinesh Anadibhai Bhesnia,
Age – Major, Occ – Business
R/o Gandhi Nagar, Behind Prakash Theatre,
Parola Road, Dhule

At present Block No.A-5

Nillamber Bunglow I, Narayan School,
Kaa Pass, Wagadia Ring Road,
Dabhoi, Vadodara (Gujrat)

2. Pralhad s/o Rajaram Patil,

Age – Major, Occ – Business

3. Narayan s/o Rajaram Patil,
Age – Major, Occ – Nil

4. Guddi Rajaram Patil,
Age – Major, Occ – Nil

Respondents No.2 to 4
R/o Narwhal, Taluka and District – Dhule
(Respondents No.2 to 4 are LR's of 10-A)

5. Dineshkumar Rasiklal Agrawal,
Age – Major, Occ – Business,
R/o Railway Station Road,
Near Court, In front of Snheenagar,
Near Maratha Boarding, Dhule

6. Umesh Rasiklal Agrawal,
Age – Major, Occ – Business
R/o As above

7. Rajesh Rasiklal Agrawal,
Age – Major, Occ – Business,
R/o As above

8. Meerabai Rasiklal Agrawal,
Age – Major, Occ – Household,
R/o As above

9. Khsibu Dineshkumar Agrawal
Age – Major, Occ – Household
R/o As above

10. Rajaram Bhaga Patil (Died) LR's

10A Sonubai Rajaram Patil (Died)
LR's – respondents No.2, 3 and 4

10B Ashabai Rajaram Patil (Died)
LR already on record 10C

10C Indubai Suresh Patil,
Age – Major, Occ – Nil

(Respondent No.10C is LR of respondent No.10B)

10. Kum. Dipa Ramesh Galani,
Age – Major, Occ – Nil
R/o As above
11. Kum. Roma Ramesh Galani,
Age – Major, Occ – Nil
R/o As above
12. Sau. Kalpana Hemant Kapadiya,
Age – Major, Occ – Nil
R/o Lotas Narsari Plot No.26,
Lane No.6, NICIMIDC,
Satpur, District – Nashik

.....
Mr. Kishor C. Sant, Advocate for the petitioners
Mr. Subodh P. Shah, Advocate for respondent No.6
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 23rd JUNE, 2016

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and heard Mr. Sant, learned advocate for the petitioners and Mr. Shah for respondents No.5 to 9 finally by consent.
2. It is plaintiffs' writ petition against an order dated 5th December, 2012 upon an application Exhibit-170 in Regular Civil Suit No. 440 of 1994 whereunder request of the plaintiffs for amendment to plaint has been declined by Joint Civil Judge, Junior Division, Dhule.

3. The petitioners contend that the trial court, under the impugned order, has committed grave error in declining the request in application Exhibit-170, since largely the law as holds field, is that the courts ought to be liberal while considering applications for amendment of pleadings. Learned advocate contends that despite making reference to the guidelines those would regulate consideration of amendment application, as narrated under paragraph No.4 of the impugned order, the court went on to reject the application. Learned advocate goes on to submit that the amendment was necessitated after written statement had been filed by the respondent - defendant No.7, whereunder there is reference to that part of property having been acquired and compensation being distributed and it was thereupon, the amendment application had been moved immediately in the year 2012. He submits that having regard to aforesaid, the matter has not been appreciated by the learned judge properly and in the process, the impugned order got overwhelmed by the considerations which may not be germane for consideration of application for amendment. Learned advocate further submits that in the extreme case of unlikely consideration of this writ petition, costs may remedy the situation.

4. Countering aforesaid submissions, Mr. Shah, learned advocate emphasizes the background in which the matter will have to be considered. He refers to that the property under the suit had been purchased *Benami* in the name of plaintiff No.1, way back in 1964. In 1983, suit had been instituted by the real owner against the *Banami* holder seeking declaration of ownership and further that the land all along had been in possession of the real owner and was being dealt with as such, by him. Possession of the land had not at all been parted with to any person before transactions in respect of the same had taken place subsequently after decision in the suit of 1983 in favour of the real owner. Suit of 1983 had been decreed in the year 1989. During pendency of the suit, the property purportedly was sold by present plaintiff No.1 to plaintiff No.2. Even after the decree in 1989, the suit seeking declaration that decree of 1989 had been null, has been instituted in 1993, which is obviously outside the period of limitation. Way back in 1998, the real owner had parted with and transferred suit property in favour of present respondents No.5 to 9 – defendants No.5 to 9 for a valuable consideration under a registered instrument. The property was being enjoyed by the purchasers – defendants No.5 to 9 as its absolute owners. With the passage of time, certain portion of the

purchased property had been acquired for road widening and its compensation had also been paid to the land holders on record. Revenue record was all along maintained as per transactions initially in favour of the real owner Anandibhai and subsequently the purchasers. At no point of time, there had ever been semblance of resistance to aforesaid events / happenings or any curative measure had ever been taken.

5. Over and above this, he submits that even by own saying of the petitioners that they came to know about aforesaid events after obtaining copies of revenue record, no immediate movement had been made to arrest the situation. He contends that after getting revenue record, present respondents No.5 to 9 were brought on record by an application Exhibit-88. While doing so, the petitioners were aware about that defendants No.5 to 9 had been purchasers of the property under registered instrument in 1998, yet no further action challenging transaction of 1998 had been taken. It was only in November, 2012, application came to be moved for amendment of the plaint trying to take props of filing of written statement by defendant No. 7. Having regard to aforesaid, the court has properly gauged the facts and its effect. The events quite eloquently according to him exhibit not only non challenge to the court proceedings but also culpable

negligence to a huge extent. According to him, the amendment is a discretionary power of the court and exercise of discretion in this particular case cannot be faulted with for, order is a well reasoned order and is in due compliance of the requisite judicial principles including the principles of justice, equity and good conscious. He submits that the procedure and the court process cannot be allowed to be overstretched and in this case those have been stretched to the limits and in the process the court could not have, arrested breaking happening on over-stretching. He thus, supports the impugned order.

6. The position emerges that the impugned order has taken into account aforesaid factual aspects, which are largely not disputed. Though learned advocate for the petitioner has vehemently argued that the point of knowledge for filing written statement was 2012, the position shows the same has been pleaded in order to suit convenience of the claims being made. The factual position shows that the matter had been pending since 1994, the property had been parted with in 1998 and certain land acquisition had also taken place. Revenue entries in favour of the concerned respondents have been made long back. Even revenue entries with regard to acquisition have also been taken way back in 2009. Revenue entries as contended to have

come to the knowledge of the petitioners around 2010 and even then no movement had been made earlier on till written statement had been filed. In the face of such situation, although it may be considered that amendment applications are to be viewed liberally, in the gross facts of this case, it is difficult for this court to accede to the request being made by learned advocate for the petitioners and having regard to that the discretion exercised by the trial court does not appear to be liable to be faulted with at this stage.

7. The writ petition, as such, is dismissed. Rule stands discharged. It is, however, made clear that the order has efficacy only for rejection of the writ petition. It would not preclude petitioners to question the impugned order in proper proceedings having regard to section 105 of the Civil Procedure Code.

8. Having regard to that the suit is pending since 1994, the same be proceeded with as expeditiously as possible and be disposed of at the earliest.

[SUNIL P. DESHMUKH, J.]