

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

43 WRIT PETITION NO. 9662 OF 2013

RIZWAN NAJIBUDDIN SIDDIQUI AND OTHERS
VERSUS
SYED RAFAT MOHIUDDIN SYED GOUS MOHIUDDIN
AND OTHERS

Shri. Ajeet D. Kasliwal, Advocate, for petitioners.

Shri. Mujtaba Gulam Mustafa, Advocate, for respondent
No.1.

Shri. D.L. Vakil, Advocate, for respondent No.4.

CORAM: T.V. NALAWADE, J.

DATE : 5 DECEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by learned 10th Joint Civil Judge, Junior Division, Aurangabad on Exhibit 88 of Regular Civil No.1122/2008.

Heard both the sides.

2) The aforesaid application was filed by defendant Nos.4 to 10 of Regular Civil Suit No.1122/2008 for seeking permission to amend the written statement. The application was filed after filing of the evidence by the

plaintiff. It is the case of the plaintiff that the owner of the property who is shown as vendor was not alive on the date of the sale deed and no title was passed by the deceased. The suit is filed for relief of declaration that the sale itself is void and relief of possession is also claimed. The petitioners have contended that the aforesaid contention made by the plaintiff that the owner was not alive and sale deed has not passed title is not correct. It can be said that in the written statement it is the contention that the defendants became owner under registered sale deed executed by owner and they came in possession.

3) Now the defendants want to add one more contention that they were in possession of the suit property on the relevant date as mentioned in Hyderabad Tenancy and Agricultural Lands Act and so even after the aforesaid transaction they were in possession as tenant. Learned counsel for the petitioners placed reliance on three reported cases like :

(1) 2002 (Supp. 2) Bom.C.R. 764 (Dadabhau Shankar Ghodke v. Mohanlal Kanhyalal Agrawal);

- (2) **2007 ALL SCR 1333 (Usha Balasaheb Swami v. Kiran Appaso Swami);**
- (3) **2009 ALL SCR 2707 (Sushil Kumar Jain v. Manoj Kumar).**

Learned counsel for the petitioners submitted that even if pleadings are inconsistent, such pleas can be allowed to be taken and the amendment in that regard also can be permitted. On the other hand, learned counsel for respondent, original plaintiff placed reliance on observations made by the Apex Court in the case reported as **AIR 2009 SC 1433 (Vidyabai v. Padmalatha)**. Learned counsel submitted that the Apex Court has made it clear that the provisions of Order 6 Rule 17 of the Civil Procedure Code cannot be used by defendant after filing of evidence of examination-in-chief of the plaintiff. He submitted that due diligence needs to be shown by the defendant in that regard.

4) The reasoning given by the trial Court shows that, the defendants are doing everything to protract the decision of the suit and delaying tactics are mentioned. In any case it was not the case of the defendants that they

were in possession from prior to the date of the sale deed and now they want to contend that they were in possession as tenant. In the pleading there was no mention that they have any record in support of their case that they were tenants on record as per the aforesaid Tenancy Act. In view of these circumstances the trial Court has observed that it is nothing but delaying tactics played by the defendants. In view of the aforesaid circumstances, this Court holds that the trial Court has not committed any error in rejecting the application filed for amendment. Such tactics are now played generally to delay the decision of the suit which is filed for possession. In the result, the petition is dismissed.

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

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