

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 175 OF 2015

Shri Nemichand Chimanlal Oswal .. Petitioner
Vs.
Shri Ananda Narayan Patil and ors. .. Respondents

Mr.Prashant Jadhav, for the Petitioner.
None for the Respondents.

CORAM : M.S.KARNIK, J.
DATE : 10th OCTOBER, 2016

PC. :

. This Court by order dated 26/03/2015 issued notice to the respondents indicating that the matter may be heard and disposed of finally at the admissions stage. None for the respondents No.1 to 7 though they are duly served. In the circumstances, the Petition is taken up for final disposal at the admission stage.

2. The petitioner - original plaintiff is challenging the order dated 12/11/2014 in application for amendment filed by him below Exhibit 52 passed by the Joint Civil Judge, Senior Division, Kolhapur in Special Civil Suit No. 18 of 2010 whereby

the learned trial Judge was pleased to reject the application for amendment.

3. The petitioner has filed the Suit for declaration and injunction against the respondents. Respondents No.1 to 4 & 7 resisted the Suit by filing their common written statement. Respondents No. 5 & 6 also filed their written statement. The petitioner then filed application below Exhibit 52 for carrying out amendment in the Suit as there should not be any technical difficulty. According to the petitioner, Suit was filed for declaration and injunction, however, by mistake/inadvertently, the declaration for cancellation of the illegal sale deed which is issued in favour defendants No. 5 & 6 remained to be added. Hence, the application was filed below Exhibit 52 for amendment in paragraphs 9 & 17 of the Suit. The petitioner wanted to add one line in paragraph 9 as line no. 23 that the defendants No. 5 & 6 have entered into illegal sale deed and the same should be cancelled. 2nd amendment in paragraph 17 is that registration No. 4123 of 2009 of the sale deed dated 29/06/2009 issued in favour of the defendants No. 5 & 6 by

defendants No.1 to 3 be cancelled. According to the petitioner by the said amendment nature of the Suit will not be changed and no harm will be caused to the respondents if the said amendment is allowed.

4. The said application for amendment was opposed by the respondents and one of the contentions raised was that relief claimed by petitioner is beyond the period of limitation. The learned trial Judge by order dated 12/11/2014 passed below Exhibit 52 was pleased to reject the application principally on the ground that the relief claimed by way of amendment are beyond the period of limitation prescribed by provisions of the Limitation Act, 1962.

5. Heard the learned Counsel for the petitioner. Nobody appears on behalf of respondents through they are duly served to oppose the present Petition. The prayer made by the petitioner for amendment is reasonable. The contention of the defendants that the relief prayed are beyond the period of limitation can appropriately be dealt with by the learned trial Judge after giving opportunity to the respondents to file their

written statement to the amended plaint. The petitioner by way of amendment was only seeking declaration that the sale deed executed in favour of the respondents No. 5 & 6 be cancelled. The amendment does not change the nature of the Suit and no prejudice will be caused to the respondents if the amendment is allowed as they will have every right to file written statement to the amended plaint. At this stage, the learned trial Judge ought not to have gone into the merits of the amendment. All contentions of the respondents as regards the merits of the amendments are kept open including the issue of limitation.

6. It is submitted by the learned Counsel for the petitioner that issues have been framed. However, the application Exhibit 52 for amendment is allowed in the interest of justice as it does not change the nature of the Suit. The respondents can be adequately compensated by imposing costs of Rs.2,000/- to be paid by the petitioner within a period of 2 weeks from today. The amendment be carried out within a period of 2 weeks from today. The learned trial Judge may then grant opportunity to the respondents to file written statement

within such time as may be prescribed and proceed with the matter in accordance with law.

7. The Writ Petition is accordingly allowed.

8. The impugned order dated 12/11/2014 passed below Exhibit 52 in Special Civil Suit No. 18 of 2010 is quashed and set aside.

9. Parties to act upon authenticated copy of this order.

(M.S.KARNIK, J.)