

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

WRIT PETITION NO. 1416 of 2016

Dr. Prakash Kanhayalal Kankriya,
age 58 years occupation Medical Practitioner
R/o Sai Surya Netra Seva, Manik Chowk, Ahmednagar
...**PETITIONER**

VERSUS

1. Raosaheb S/o Jijaba Anbhule,
age 70 years occupation agriculture
R/o Premdan Chowk, Nagar-Manmad road,
Savedi, Ahmednagar.
2. Bhushan S/o Raosaheb Anbhule,
age 38 years occupation Agriculture R/o as above.
3. Sadashiv S/o Vitthal Shelar,
age 51 years occupation Agriculture
R/o Shelar Mala, Nagardevle Taluka and Dist. Ahmednagar
4. Sindhutai Madhukar Shelar,
age 46 years occupation & R/o as above.
5. Dr. Rajesh Vasantrao Patil,
age 46 years occup. agriculture
R/o Shahu Nagar, District Jalgaon.
6. Prakash S/o Kundalik Kardile,
age 49 years occupation agriculture
R/o Burhan Nagar Taluka and Dist. Ahmednagar
7. Shivaji S/o Bhanudas Kardile,
age 58 years occupation and R/o as above.
8. Shahamdar Masjid Dargah & Kabrasthan Wakf,
Registration No. W.B. 828(102) Bhingar, Ahmednagar
9. Badshah Chabubhai Pathan,
age 55 years occupation Agri.
R/o Burhan Nagar, Ahmednagar

10. Shaikh Rahimsha Miya Chand Miya,
age 62 years occupation nil
R/o Govindpura, Ahmednagar

...**RESPONDENTS**

Mr Satyajit S. Bora, Advocate for petitioner.

Mr Nitin Gaware, Advocate for respondent No.2

Mr V.P. Latange, Advocate for respondents No. 8 and 9

CORAM : NITIN W. SAMBRE, J.

DATE : 15th November, 2017

ORAL ORDER :

Petition is filed by the original plaintiff, wherein application Exhs.100 and 116 came to be moved, which were allowed by the learned Civil Judge (Senior Division), Ahmednagar, vide order dated September 5, 2015 wherein it was directed that original agreement of sale dated May 3, 2002 and supplementary agreement for sale executed in the year 2006, which is subject matter of Criminal Case No. 310 of 202, pending on the file of the Judicial Magistrate F.C., Court No.7, Ahmednagar, be produced.

2. After the aforesaid order was passed on September 5, 2015, the petitioner moved an application seeking amendment of plaint under provisions of Order VI Rule 17 of the Civil Procedure Code, wherein he intends to rely upon recitals of the agreement for sale dated 16th May 2006. Said application came to be rejected by

the learned Trial Court, vide its order dated January 2, 2016. As such, this petition.

3. The prayer for amendment is obviously opposed by the learned Counsel Shri Gaware for contesting respondents. Learned Counsel for respondents, would urge that the fact that documents are in the custody of Criminal Court, is well within knowledge of the plaintiff, even prior to filing of the suit, and as such, the present petitioner should have taken appropriate precautions. According to him, it is at the midst of the cross-examination of the plaintiff, application for amendment is moved so as to overcome the admissions extracted by the defendants from the plaintiff. He would then urge that so far as the claim of the plaintiff based on the document viz. supplementary agreement dated 16th May 2006 is concerned, the amendment is sought for hardly of any necessity as said document is duly relied upon in the evidence by plaintiff.

4. Considered opposition of the respondents. It is required to be noted that the fact remains that original document was seized in crime which has given rise of State case being Criminal Case No. 310 of 2012. The Trial Court has directed the Court of Judicial Magistrate First Class to produce the said document on its record while dealing with claim in applications Exh. 100 and 116, vide its order dated September 5, 2015.

5. In the wake of above, once the said document in its original is produced on record, in my opinion, it was always open for the present petitioner/original plaintiff to rely upon the same as contents thereof have come to his knowledge for the first time when it was produced before Court. It cannot be inferred from the record that respondents/defendants were taken by surprise by the amendment, that is sought for by the petitioner. The fact remains that basis of such amendment could be noticed in the plaint.

6. Though the learned Trial Court has rejected the claim of the present petitioner for amendment on the ground that the fact was well within knowledge of the petitioner, however, one cannot loose sight of the fact that the document for the first time was produced before the Court pursuant to order dated September 5, 2015 and it is after production of such document the petitioner has sought amendment to the plaint.

7. In the wake of above, in my opinion, order impugned in the present petition dated January 2, 2016 passed by the Civil Judge (Senior Division) below Exh. 146 in Special Civil Suit No. 58 of 2012 is liable to be quashed and set aside and accordingly it is quashed and set aside. Application Exh. 146 stands allowed.

8. The petitioner/plaintiff should carry out appropriate amendment, within period of ten weeks from today, if necessary, by taking case on board. Concerned respondents/defendants will be at liberty to file written statement within four weeks thereafter.

9. Petitioner do deposit costs of Rs. 5000/- (Rs. Five thousand only) before the Trial Court, to which respondents No.1 to 5 will be entitled to.

10. It is made clear that since this Court has already expedited hearing of the petition, it is assured by the learned Counsel for respondents that the respondents/defendants shall not seek unnecessary adjournment and shall co-operate the Trial Court in disposing of the matter.

11. The Writ Petition stands allowed in above terms.

(NITIN W. SAMBRE, J.)

pjm