

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.9675 OF 2017  
(Shashikala Vasantrya Rannavare Vs. Vinod Madhukar Mandlik and others)

Mr.R.S.Sadaphule, Advocate for the petitioner.

( CORAM : Ravindra V.Ghuge, J.)  
DATE : 07/08/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 15/03/2017 passed by the Trial Court rejecting application Exh.62 and therefore refusing to allow the application for amendment.

2. Learned Advocate for the petitioner has strenuously criticized the impugned order. He submits that the suit is filed on 29/03/2007 for partition and separate possession. The petitioner was not aware that her share in the ancestral property was sold by her brothers in 1981. The knowledge about the same was noticed recently and hence an application was filed under order 6 Rule 17 of the CPC seeking an amendment. The Trial Court has illegally rejected the said application. Reliance is placed on the judgment of the Hon'ble Apex Court in the matter of Abdul Rehman and another Vs. Mohd.Ruldu and others [(2012) 11 SCC 314].

3. I have considered the submissions of the petitioner and have gone through the judgment cited.

4. The ancestral property was held by the father of the petitioner Madhukar Mandlik who passed away on 01/06/1966. The mutation entry pursuant to his demise was carried out on 29/11/1967. 5 acres out of the total land admeasuring 17 Acre 26 Guntha, was acquired by the Government and the compensation was paid to the deceased Arun Madhukar Mandlik, who is the brother of the petitioner. Thereafter, a share of the petitioner is said to have been sold out in 1981.

5. The above factors have not been pleaded by the petitioner in her plaint. In the entire application Exhibit 62, which is in Marathi, the petitioner has not devoted even a single paragraph to explain as to how the petitioner can be said to be unaware of the above factors which were based on events that had occurred in between 26 to 32 years ago. The proviso below Order 6 Rule 17 casts an obligation on the applicant claiming amendment, to justify that despite due diligence, the factors sought to be introduced by an amendment were not within the knowledge of the applicant.

6. Exhibit 62 does not bear out any explanation. In fact, in the last paragraph it is averred that the amendment sought for challenging the sale deed of 1981 and the disbursement of compensation of 1975, is of a formal nature and such a formal amendment be permitted.

7. I do not find that the proposed amendment could be termed as being a formal amendment. It is in fact a challenge posed to the disbursement of compensation in 1975 and the sale deed of 1981. It is a separate cause of action and which is admittedly barred by the law of limitation. If the petitioner is not capable of filing a separate suit for being barred by the law of limitation, a cause of action which directly cannot be challenged, cannot be questioned indirectly through an amendment.

8. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous in the light of the law laid down by the Hon'ble Apex Court in the matter of Abdul Rehman (supra).

9. This petition, being devoid of merit, is therefore, dismissed.

( Ravindra V.Ghugre, J.)