

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9289 OF 2014
WITH
CIVIL APPLICATION NO. 12426 OF 2015

1. Balasaheb Sarjerao Dangade,
Age. 40 years, Occ. Agri.,
R/o. Ghugalwadgaon, Taluka Shrigonda,
District Ahmednagar.

2. Smt. Adika Sadashiv Dhawang,
Age. 55 years, Occ. Household,
R/o. In front of Zilla Parishad Marathi
Primary School, Shrigonda,
Taluka Shrigonda, District, Ahmednagar.

3. Smt. Ranjana @ Bayadabai Haridas
Pandule, Age. 47 years, Occ. Household,
R/o. In front of Zilla Parishad Marathi
Primary School, Shrigonda, District
Ahmednagar.

..Petitioners.

Versus

1. Chandar Shiva Sasane,
Deceased through his L.Rs.

Shivram Chandar Sasane,
Age. 68 years, Occ. Agri.,
R/o. Ghugalwadi, Taluka Shrigonda,
District Ahmednagar.

2. Baba Babu Guldagad,
Deceased through his L.Rs.

2-A. Appa Baba Guldagad,
Age. 44 years., Occ. Agri.,
R/o. Lipangan, Dhagarvasti,
Tq. Shrigonda, District Ahmednagar.

2-B. Bhanudas Baba Guldagad,
Age. 47 years, Occ. Agri.,
R/o. Ghugalwadi, Taluka Shrigonda,
District Ahmednagar.

2-C. Sanjay Baba Guldagad,
Age. 37 years, Occ. Agri.,
R/o. Jangalewadi, Shrigonda Factory,
Taluka Shrigonda, District Ahmednagar.

2-D. Smt. Kantabai Dhukaji Shriram,
Age. 57 years, Occ. Agri.,
R/o. Pishorakhand, Taluka Shrigonda,
District Ahmednagar.

2-E. Smt. Suman Sampat Sarak,
Age. 42 years, Occ. Agri.,
R/o. Lipangan, Dhangarvasti,
Taluka Shrigonda, District Ahmednagar.

2-F. Smt. Kaushalyabai Baba Guldagad,
Age. 67 years, Occ. Housewife,
R/o. Ghugalwadi, Taluka Shrigonda,
District Ahmednagar.

3. Narayan Sarju Dangade,
Age. 55 years, Occ. Agri.,
R/o. Ghugalwadi, Taluka Shrigonda,
District Ahmednagar.

4. Smt. Rajubai Sarju Dangade,
Age. 68 years, Occ. Housewife,
R/o. Ghugalwadi, Taluka Shrigonda,
District Ahmednagar.

5. Pushpabai Vithal Waghmore,
Age. 42 years, Occ. Agri.,
R/o. Shinde, Taluka Karjat,
District Ahmednagar.

..Respondents.

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Advocate for Petitioners : Shri S.S.Jadhavar
Advocate for Respondents : Shri S.P.Brahme
Advocate for Respondents 2A to 2F : Shri D.S.Dikale
h/f Shri V.D.Sapkal

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 12, 2017

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the order dated 26.8.2014, by which, the trial Court has allowed application Exhibit 127, filed by the respondent / original plaintiff in RCS No.118 of 1979, thereby, permitting the plaintiff to amend the plaint under Order VI Rule 17 of the CPC and the proviso thereunder.
5. I have considered submissions of the learned Advocates for respective sides and have gone through the petition paper book with their assistance.
6. The grievance of the petitioner is that by the proposed amendment, a different challenge is being sought to be putforth by the proposed paragraph No.5A. The sale deed dated 13.6.1969 is the subject matter of RCS No. 118 of 1979, which was instituted on 15.2.1979. The entire evidence of the plaintiff and defendants has

been recorded. The suit is practically 38 years' today. After a passage of 35 years, the plaintiff has moved application Exhibit 127 on 9.6.2014, proposing the amendment under paragraph No.5A. Issue as regards the effect of Section 5(4) of the Maharashtra Inferior Village Watan Abolition Act ("Act of 1958") has been raised for the first time. Effect of lack of permission by the District Collector, without which the sale deed cannot be given full effect, has been raised after 35 years of the filing of the suit and after the recording of evidence. It is, therefore, contended that the nature of the suit and the cause of action is sought to be substantially altered.

7. Shri Brahme, learned Advocate has strenuously defended the impugned order on the ground that the legality of the sale deed 13.6.1969 has been raised in the suit. Paragraph No.4 deals with the contention of the plaintiff that the said sale deed is illegal and as such the sale would not be binding upon the plaintiff. He submits that since the pleadings are found in the plaint and a specific prayer having been inadvertently left out, justifies the amendment notwithstanding the effect of the proviso to Rule 17 under Order VI of the CPC. He, therefore, submits that even after considering the aspect of due diligence, the amendment could be allowed.

8. I find from the impugned order that the trial Court has not considered the aspect of due diligence. The suit at the time of the

passing of the impugned order was 35 years' old and though the plaintiff has not put forth a specific contention with regard to the applicability of the Act of 1958, the amendment has been allowed. I do not find that the trial Court has taken into account the aspect of due diligence, which finds place in the CPC under the proviso to Rule 17 of Order VI. The legislative intent and object behind introducing the proviso to Rule 17 is evident. It is intended that an amendment ought not to be allowed belatedly. When the recording of evidence in the matter was complete and when the issue pertains to the sale deed dated 13.6.1969, whose legality is subject matter of the suit with pleadings under paragraph No.4 of the plaint, I do not find that the trial court was justified in allowing the application for amendment.

9. In the light of the above, this petition is allowed. The impugned order dated 26.8.2014 is quashed and set aside and application Exhibit 127 stands rejected. Needless to state, the trial Court while delivering the judgment in RCS No.118 of 1979, shall consider the effect of the pleadings set out in the plaint and especially paragraph Nos.3 and 4 in the light of the oral and documentary evidence.

10. Rule is made partly absolute in the above terms.

11. Since the suit is of the year 1979, the joint request of the learned Advocates for expediting the suit is accepted. The trial Court shall decide the said suit as expeditiously as possible and in any case on/or before 13.10.2017.

12. Pending Civil Application, if any stands disposed off.

(RAVINDRA V. GHUGE, J.)

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