

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9533 OF 2015

1. Sarlabai Dawal Vadhile,
Age-50 years, Occu-Agriculture,
Sriram Nagar, Amalner, Teku Road,
In front of Market Yard, Amalner,
Taluka - Amalner, Dist. Jalgaon,

2. Rohan Dawal Vadhile,
Age-29 years, Occu-Agriculture,
Sriram Nagar, Amalner, Teku Road,
In front of Market Yard, Amalner,
Taluka - Amalner, Dist. Jalgaon,

3. Prasad Dawal Vadhile,
Age-23 years, Occu-Agriculture,
Sriram Nagar, Amalner, Teku Road,
In front of Market Yard, Amalner,
Taluka - Amalner, Dist. Jalgaon

-- PETITIONERS

VERSUS

1. Rajesh Nemichand Kothari,
Age-48 years, Occu-Business and Agriculture,
Residing at 5, Priyadarshini Apartment,
M.J.College Road, Amalner, H.Mukkam,
Taluka and Dist. Jalgaon,

2. Sharmila Kishore Kothari,
Age-45 years, Occu-Business and Agriculture,
Residing at 9/23, Anand Society,
Shankar Sheth Road, Pune,

3. Mudhita Kishore Kothari,
Age-24 years, Occu-Service,
Residing at 9/23, Anand Society,
Shankar Sheth Road, Pune,

4. Nikita Kishore Kothari,
Age-22 years, Occu-Service,
Residing at 9/23, Anand Society,

Shankar Sheth Road, Pune,

5. Vinod Nemichand Kothari,
Age-55 years, Occu-Business and Agriculture,
Residing at New Plot, Shreyas Bhavan,
Amalner, Tal.Amalner, Dist.Jalgaon,
 6. Sunanda Vinod Kothari,
Age-50 years, Occu-Household,
Residing at New Plot, Shreyas Bhavan,
Amalner, Tal.Amalner, Dist.Jalgaon,
 7. Prabhavati Narendrakumar Surana,
Age-65 years, Occu-Household,
Residing at Surana Palace, Freeganj,
In front of Daseharrah Maidan,
Ujjain, Madhya Pradesh,
 8. Pushpavati Virchandji Samdiya,
Age-63 years, Occu-Household,
Residing - Main Road, Near Jain Mandir,
Yeovla, Mukkam Post - Yeovla,
District - Nashik
- RESPONDENTS

Mr.Mobin H.Shaikh, Advocate for the petitioners.
Mr.G.S.Rane, Advocate for respondent Nos. 1 to 4.
Mr.B.R.Warma, Advocate for respondent Nos. 5 to 8.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 04/09/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners / original defendant Nos. 5, 6 and 7 are aggrieved by the order dated 19/08/2015 by which the Trial Court

has allowed Application Exh.72 and has permitted the original plaintiffs to amend their plaint.

3. I have considered the strenuous submissions of the learned advocates for the respective sides.

4. The plaintiffs, while instituting the suit for partition and separate possession in relation to the ancestral property in 2012, have pleaded in paragraph No.1 that defendant Nos. 5, 6 and 7 have entered into some sale transactions with defendant Nos. 1 to 4. For lack of knowledge, the details about such sale transactions were not mentioned in the plaint. Further averments were made in paragraph Nos. 7 and 8 pertaining to the conduct of defendant Nos. 1 to 4 and the purported illegal sale transactions with defendant Nos. 5 to 7.

5. Issues were cast by the Trial Court on 14/09/2014. Issue No.3 is with regard to whether the sale transactions between the defendants were illegal or not. Issue No. 7 is with regard to whether the suit was filed within limitation.

6. By application Exh.72, the plaintiffs have identified the specific sale deeds pursuant to the details mentioned by the defendants in

the written statement filed in June 2013. Having identified the sale deeds, a specific relief is sought that the sale deeds be declared illegal and consequentially be declared as not binding upon the plaintiffs.

7. Serious grievance is voiced by the petitioners that after mutation entries were effected by the revenue authorities, the plaintiffs had preferred RTS Revision No.10/2012 u/s 257 of the M.L.R. Code before the S.D.O. challenging the mutation entries on the basis of the sale deeds. The said RTS revision was rejected. The appeal preferred by the plaintiffs u/s 247 of the M.L.R.Code before the Additional Collector has also been rejected. This fact has been suppressed by the plaintiffs in Exhibit 72 and while seeking amendment under the proviso to Rule 17 under Order 6. Suppression of these aspects would disentitle the plaintiffs for any relief on the ground of due diligence.

8. It appears from Exhibit 72 that the plaintiffs have stated that the amendment is sought on the basis of the knowledge derived by them from the written statement filed by the defendants. It is obvious that the mutation entry proceedings have not been stated in Exhibit 72. Notwithstanding the fact that the mutation entries would not crystalize the rights or title of any litigating side with reference to

the suit property, the plaintiffs should have fairly stated that the mutation entries were challenged on the basis of the said sale deeds. As the mutation entries were challenged in 2012, much prior to the filing of the written statement, it would thus reveal that the plaintiffs were aware of the sale deeds even before filing of the written statement. Keeping in view the law laid down by the Hon'ble Apex Court in the matter of Bhaskar Laxman Jadhav and others Vs. Karamveer Kakasaheb Wagh Education Society and others [AIR 2013 SC 523], the plaintiffs deserve to be penalized by imposition of costs.

9. It also cannot be ignored that the Trial Court has already framed the issue with regard to the legality of the sale transactions in between the defendants. The onus and burden of proving the illegality of the sale transactions would lie on the shoulders of the plaintiffs. The suit being in relation to ancestral properties and as the issue of legality has also been framed, it would be harmless to permit the plaintiffs to put forth a specific prayer so that the pleadings in the suit would be completed.

10. Learned Advocate for the petitioners is justified in contending that the amendment will have to be permitted from the date of

Exhibit 72 and as such the limitation aspect will have to be kept open, lest a time barred prayer might be entertained by the Trial Court by way of an amendment which would be otherwise impermissible.

11. Considering the above, this petition is partly allowed and the impugned order to the extent of clause 7(a) would be modified by directing the plaintiffs to pay additional costs of Rs.5,000/- to defendant Nos. 5 to 7 who are petitioners herein, who shall withdraw the said amount in equal share. The costs shall be deposited within 3 (three) weeks from today in the Trial Court, failing which, the plaintiffs would not be permitted to amend the plaint.

12. The amendment allowed by the impugned order would be effective from the date of Exh.72 which is 21/02/2015. The Trial Court would consider the effect of the bar of limitation to the amended portion and the additional prayers permitted vide the amendment, under issue No.7 while deciding this petition.

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

(Ravindra V.Ghuge, J.)