

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12189 OF 2017

LAXMAN JAGANNATH SATHE
VERSUS
BABASAHEB GANGADHAR NAVLE AND OTHERS

...

Advocate for Petitioner : Mrs. Langhe Pooja V and Mr. V R Langhe

Advocate for Respondents : Mr. N.N. Singh and Mr. A.R. Kawade

.....

CORAM : V. K. JADHAV, J.
DATED : 2nd NOVEMBER, 2017

PER COURT:-

1. Being aggrieved by the order dated 6.9.2017 passed below Exh.76 in Special Civil Suit No. 183 of 2013, by the learned Joint Civil Judge, Senior Division, Aurangabad, the petitioner original plaintiff has preferred this writ petition.

2. Brief facts giving rise to the present writ petition are as follows:-

The petitioner-original plaintiff has instituted a suit for declaration of ownership, recovery of possession and for perpetual injunction. It is the case of the petitioner that he paid 3/4 of the purchase amount whereas 1/4 amount was paid by one Gangadhar Navle, who happened to be father in law of the petitioner, however, the sale deed executed in the name of said deceased Gangadhar. The respondents, who are legal heirs of deceased Gangadhar,

denied the title of the petitioner. The petitioner-original plaintiff after evidence in the suit was over and when the suit was posted for arguments, filed an application Exh.76 seeking amendment in the plaint. The respondents have strongly resisted the application by filing say at Exh.79. The learned Joint C.J.S.D. Aurangabad, by its impugned order dated 06.09.2017 rejected the said application with costs. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the amendment sought for is of formal in nature and those are due to typographical mistakes in the plaint. The petitioner has sought the amendment in the figures as "3/4" instead of "2/4". So far as the consideration amount paid by the petitioner and share in the suit property and also the correction in respect of year, the petitioner plaintiff wants to correct the year "1970-71" instead of "1980-81". Even though the trial court has recorded the finding to point No.1 as the proposed amendment does not change the nature of the suit, rejected the application solely on the ground that the application came to be filed after conclusion of final arguments of the defendant and as such, the plaintiff has not exercised due diligence to file the application seeking amendment at the earlier stage.

4. Learned counsel for the petitioner submits that in the following

cases the Supreme Court and this court has allowed the amendment at belated stage.

- I) M/s Estralla Rubber vs. Dass Estate (Pvt.) Ltd. reported in AIR 2001 SC 3295,
- II) Mahila Ramkali Devi and others vs. Nandram (D) through L.Rs. And others, reported in 2015 AIR (SC) 2270,
- III) Shantabai Nattuhji Thakre vs Vasant Shyamraoji Wankhede and others, reported in 2015 (1) Mh.L.J. 636
- IV) Surender Kumar Sharma vs. Makhan Singh, reported in (2009) 10 SCC 626

5. Learned counsel for the respondents submits that the court is barred from allowing any amendment after the trial has commenced unless the condition set out in Order VI Rule 17 is satisfied. Learned counsel in order to substantiate his contentions, placed reliance on the judgment in the case of ***Prabhakar Sadashiv Gokhale and another vs. Ramesh Shankar Ladkat and others, reported in 2017 (4) Mh.L.J. 634.***

6. In the instant case, it appears that the amendment sought for is formal in nature. It further appears that there are some typographical mistakes in the plaint and by filing application Exh. 76 the petitioner

plaintiff wants to correct the same.

7. On perusal of contents of application, it appears that the amendment sought for is extremely formal in nature and there appears to be typographical mistakes in the plaint. The said mistakes are apparent on the face of record. Even the learned Judge of the trial court has also observed that the proposed amendment does not change the nature of the suit. Even it is not the case of the respondents that the proposed amendment would likely to cause prejudice to the defence of the respondent-defendant.

8. In view of above, I am inclined to allow this writ petition. Hence, the following order:-

O R D E R

- I. Writ petition is hereby allowed. No costs.
- II. The impugned order dated 6.9.2017 passed below Exh.76 in Special Civil Suit No. 183 of 2013 by the learned Joint Civil Judge, Senior Division, Aurangabad is hereby quashed and set aside.

- III. The application Exh.76 is hereby allowed in terms of its prayer clauses.
- IV. As an abundant precaution, the respondents-defendants are at liberty to recall any witness, if so desires.
- V. Writ petition is accordingly disposed of.
- 9. Registry to issue authenticated copy of this order to the requesting party.

(V. K. JADHAV, J.)

rlj/