

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

914. WRIT PETITION NO. 11409 OF 2014

Rajendra S/o Pundlikrao Bhamre,
age 59 years occupation business
R/o Gandhi Chowk, Shindkheda
Taluka Shindkheda Dist. Dhule

...PETITIONER

VERSUS

1. Pandit S/o Baliram Marathe,
age 67 years occupation agriculture
R/o Warul Taluka Shindkheda District Dhule
2. Nimba S/o Baliram Marathe,
age 51 years occupation and R/o as above.
3. Smt. Dwarakabai Baburao Marathe,
age 63 years occupation household
R/o Shindkheda Taluka Shindkheda Dist. Dhule
4. Smt. Durgabai Bhikan Marathe,
age 61 years occupation household
R/o Rotwad Taluka Dharangaon Dist. Jalgaon.
5. Smt. Meerabai Hilal Marathe,
age 55 years occupation household
R/o Kolarli Taluka and Dist. Nandurbar
6. Priya D/o Rajendra Bhamre,
age 26 years occupation household

(Petition is dismissed as against respondents
No. 3 & 6 as per order dated 27th February 2015)

7. Vishal S/o Rajendra Bhamre,
age 31 years occupation business
R/o near Shivaji statue, Dharangaon Dist. Jalgaon.

... RESPONDENTS

Mr P.R. Katneshwarkar & Mr Subodh P. Shah, Advocates for petitioners
Mr Shailesh P. Bramhe, Advocate for respondents No.1 and 2.

CORAM : NITIN W. SAMBRE, J.

DATE :19th September, 2017

ORAL ORDER :

In Regular Civil Suit No. 25/2008 for partition and separate possession, in which at the time of recording of evidence, defendant produced an agreement of sale, based on which, upon request made by the plaintiffs, the Trial Court by impugned order allowed amendment, which order is questioned in the present petition.

2. The order of grant of amendment is objected on following grounds.

- (a) That the present defendant has taken defence in the written statement that there was an agreement of sale,
- (b) the document viz. agreement of sale is quite old, and
- (c) the suit has travelled at advance stage.

3. Support is drawn by the petitioner from the judgment of the Apex Court in the matter of **Mashayak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka and others**, reported in AIR 2013 Supreme Court 3188 and **Rajkumar Guruwara (Dead) thr. L.Rs. Vs.**

S.K. Sarwagi and Co. Pvt. Ltd. And Anr., reported in AIR 2008 Supreme Court 2303, so as to canvass that the amendment if moved at belated stage and if such fact was within the knowledge of a party, the Court should be slow in granting such amendment.

4. So far as above referred contention of the present petitioner/defendant is concerned, it is to be noted that in a suit for partition, during the course of recording of evidence of defendant, the document viz. agreement of sale was produced for the first time. Based on the document viz. agreement of sale, plaintiffs have taken out an application for amendment of the plaint as it is for the first time he came across with the document during the course of recoding of evidence of the defendant.

5. As such, it is present petitioner/defendant, who withheld such document, which prompted plaintiffs to move an application at the stage when same was produced by the present petitioner/defendant. As such, the act on the part of the plaintiffs in moving application for amendment at the time of recoding of evidence neither can be termed as moved at belated stage nor the one which is based on the knowledge of the plaintiffs.

6. If the submissions of the petitioner are to be accepted, what

could be inferred is that the petitioner is intending to take benefit of his own wrongs.

7. In the aforesaid background, I hardly see any reason for interfering in the extra ordinary jurisdiction. Petition, as such, fails and dismissed.

(NITIN W. SAMBRE, J.)

pjm