

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1547 OF 2016

UTTAM MANIKRAO SULE
VERSUS
BAPURAO MANIKRAO SULE AND OTHERS

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Advocate for Petitioner : Shri Paranjape Prakash S.
Advocate for Respondents 1 & 2 : Shri Kalani Pravin N.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 24, 2017
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PER COURT :-

1. The petitioner / defendant is aggrieved by the order dated 20.11.2015, passed by the trial Court below Exhibit 105 by which, the plaintiff has been permitted to amend the petition in terms of the prayer "B" below paragraph No.3 of the application.

2. Learned counsel for the petitioner has strenuously criticized the impugned order, contending that when the recording of evidence was already over and the next stage in the matter would have been advancing of final arguments, that the plaintiff had filed Exhibit 105, introducing a prayer clause, which changes the complete nature of the suit. He further submits that the proviso below Rule 17 of Order VI of the Civil Procedure Code prohibits such amendment, unless due diligence is

indicated. He, therefore, prays that the impugned order be quashed and set aside.

3. Learned counsel for the plaintiff submits that though the suit has been filed for seeking injunction, a claim to the suit property was already made in the plaint. It is only after the evidence was over and especially the cross-examination of the plaintiff, that the plaintiff realized that his title was being questioned. According to him, the written statement indicates a denial by the defendants of the title of the plaintiff.

4. Having considered the submissions of the learned Advocates, I find that the plaintiff is claiming possession over the suit property. Injunction is sought against the petitioner. Possession is based on a title as is pleaded in the plaint. The prayer for declaration was missing and it appears, though belatedly, that the plaintiff has now putforth the said prayer vide Exhibit 105.

5. The claim of the plaintiff for declaration as regards the title to the suit property is otherwise not barred by limitation. He could have filed a separate suit. That would call for an independent trial and the parties would be getting into one more

round of litigation. The Honourable Apex Court in the matter of Revajeetu Builders and Developers Vs. Narayanaswamy and sons [(2009) 8 MLJ 907(SC)] and in Chakreshwari Construction Private Limited Vs. Manohar Lal [(2017) 5 SC 212], has concluded that if multiplicity of litigation can be avoided and if the opportunity to defend is available to the other side, the amendment could be allowed and mere delay in the amendment would not be a ground for rejecting such application.

6. In the instant case, by allowing the proposed prayer clause, the parties would be relegated back to the stage of filing of additional Written Statement or recording of evidence, which has been recently concluded. The hardships caused to the petitioner / defendant can be reduced by imposing costs on the respondent / plaintiff.

7. Merely because a second view is possible, the impugned order cannot be termed as being perverse or erroneous, unless it causes grave injustice to the other side.

8. In the light of the above, this petition is partly allowed only to the extent of enhancing the costs from Rs.2,000/- that was earlier granted upto Rs.5,000/-. The plaintiff shall deposit

the additional amount of costs of Rs.3,000/- before the trial Court within a period of three weeks from today and the petitioner herein - Uttam Manikrao will be at liberty to withdraw the said amount without conditions.

9. Needless to state, in the event, the petitioner desires to file an additional written statement or any other defendant so desires, they would be at liberty to do so, within a period of four weeks.

(RAVINDRA V. GHUGE, J.)

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akl/d