

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3354 OF 2015
WITH
WRIT PETITION NO. 2809 OF 2015***

Shri Vijay Balkrishna Dandekar & Ors. Petitioners
Versus
Shri Dashrath Nathu Patil & Ors. ...Respondents

Mr. Nitin Gangal, for the Petitioners.
Ms. Rupali Shinde, for the Respondent Nos. 1 & 2.
Mr. A.R.Metkari AGP for respondent Nos. 14 to 17.

***CORAM : SMT. SADHANA S.JADHAV, J.
DATE : 9th November, 2017.***

P.C. :

1. The petitioners herein happen to be the original defendant Nos. 17 to 20 in RCS No.19 of 1997 pending before the Civil Judge, S.D., at Palghar. It appears from the records that the petitioners herein had purchased the suit land after institution of the suit during the pendency of the suit in the year 2000, however, the sale deed was registered only in 2011 since there was a stay by the Revenue Authority. It is submitted that the plaintiffs had then filed an application seeking amendment to the plaint as the defendants Nos. 17 to 20 were subsequently impleaded in the said suit

in 2009. The proposed amendments were to the extent that the sale deed which was executed in favour of defendant Nos. 17 to 20 would not be binding upon the plaintiffs. The defendant Nos. 17 to 20 had filed their written statement. They had also filed the objection to the proposed amendment and had categorically submitted that the plaintiffs had knowledge in respect of the said sale deed, although it was not registered and yet the defendant Nos. 17 to 20 were impleaded only in 2009. It was also submitted that the period of limitation under the Indian Limitation Act would render from the date of knowledge and that it is in these circumstances that the sale deed would be binding upon the plaintiffs as well. It was also urged before the Court that the proposed amendment would change the very nature of the plaint and the pleadings. However, after considering the submissions advanced across the bar, the learned Civil Judge, Senior Division, Palghar by an order dated 5.2.2015 was pleased to allow the application. The learned Court had held that for elucidation the real question in controversy between the parties, the proposed amendment would be necessary. The plaintiffs were saddled with costs of Rs.1,000/-. The plaintiffs were directed to carry out the amendment in the plaint on or before 13.2.2015.

2. Being aggrieved by the said order, the petitioners had filed the present writ petition on 9.3.2015. Today, it is submitted on behalf of the respondents that even prior to filing of the writ petition, the amendment was carried out and, therefore, the question of setting aside the said order granting permission to amend the plaint cannot be quashed and set aside.

3. By an order dated 12.6.2015, interim relief was granted in favour of the petitioner and further proceedings in RCS No.19 of 1997 was stayed. It is a matter of record that by then the amendment was allowed. The suit is pending before the Civil Judge, S.D., Palghar for the last 20 years.

4. The learned counsel for the petitioners submits that the issue of limitation would go to the root of the matter. In view of the said submission and in the given facts of the case, it would be necessary to frame an issue of limitation.

5. The learned Civil Judge, S.D.Palghar shall frame the issue of limitation and then proceed further and permit the defendant Nos. 17 to 20 to file additional written statement in respect of the amended plaint as well as adduce evidence if necessary to that effect. With these directions, the Petition is partly allowed. The order of the Civil Judge, S.D., Palghar dated

5.2.2015 is hereby confirmed subject to the direction that the issue of limitation be framed and the defendant Nos. 17 to 20 be permitted to file additional written statement and adduce evidence to that effect.

6. The learned counsel for the petitioners submits that the petitioners would not seek any unwarranted adjournment. The respondents herein i.e. original plaintiffs shall also not seek unwarranted adjournments. In view of the fact that the suit is pending for last 20 years, the learned Civil Judge, S.D. Palghar is hereby directed to conclude the recording of evidence in R.C.S. No.19 of 1997 on or before 30.7.2018.

7. With these directions, both the Petitions are disposed of.

(SMT. SADHANA S.JADHAV,J.)