

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8089 OF 2017

Vanashribai w/o Kisanrao Sonkamble,
Age-44 years, Occu-Agriculturist,
R/o Swantra Sainik Colony, Nanded,
Tq. and Dist. Nanded -- PETITIONER

VERSUS

Bhagirathibai w/o Shivraj Patil,
Age-53 years, Occu-Agriculturist,
R/o Hokarna, Tq.Jalkot, Dist.Latur -- RESPONDENT

Mr.P.P.Mandlik, Advocate for the petitioner.
Mr.S.V.Chillarge h/f Mr.S.B.Patil, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 03/07/2018

ORAL JUDGMENT :

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

2. The petitioner/original plaintiff in RCS No.47/2014 is aggrieved by the impugned order dated 14/11/2016, by which application Exh.40 filed by the plaintiff seeking amendment to the plaint, has been rejected.

3. I have considered the submissions of the learned Advocates for the respective sides at length.

4. There is no dispute that the plaintiff has sought perpetual injunction against the defendant for protecting her possession over the suit land. It is specifically pleaded that the plaintiff has become the lawful owner and possessor of the suit land on the basis of a registered sale deed by which the land was purchased from the earlier owner in the presence of witnesses. The name of the plaintiff is also brought on record by the mutation entry dated 04/02/2007 and since then the plaintiff has become the owner and possessor of the suit land. As such, the plaintiff seeks to protect her possession by claiming that she is an owner. However, a specific prayer to that extent seeking a declaration of ownership and title has not been set out in the prayer clause.

5. The defendant has opposed the suit by contending that the plaintiff is not the owner and does not have any title to the suit land. If the possession is illegally acquired, she cannot seek injunction on the basis of an illegal possession. The proposed amendment would alter the nature of the cause of action and therefore this petition be dismissed with costs. In the alternative, it is submitted that if this

Court is inclined to accept this petition, heavy costs may be imposed to be awarded to the defendant and some portion be donated to the Government Medical College and Hospital, Aurangabad.

6. I find from the record that the plaintiff has sought protection to her possession by claiming ownership over the suit land. Since a specific prayer was not put forth, the suit was valued at Rs.1,000/- and court fees of Rs.200/- were paid. If a declaration as regards ownership is sought, the plaintiff would have to deposit higher court fees. The defendant has opposed the suit contending that the plaintiff is not the owner of the suit land. As a co-lateral issue, the Trial Court would have to deal with these contentions of the litigating sides. Prior to the commencement of the recording of oral evidence, the plaintiff has put forth Exh.40 seeking leave to add "by declaration of ownership in the claim clause as well as in the prayer clause". I find that the said proposed amendment would avoid multiplicity of litigation and considering the pleadings of the parties, the said prayer can be considered by the Trial Court while deciding the suit.

7. As such, this petition is allowed with the following directions :-

[a] The impugned order dated 14/11/2016 is quashed and set aside and Exh.40 stands allowed.

[b] The plaintiff shall deposit an amount of Rs.4,000/- before the Trial Court on or before 21/07/2018 and deposit Rs.2,000/- with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of “**Dean, Government Medical College and Hospital, Aurangabad CSR Fund**”), and shall report compliance of this direction by producing a receipt of having deposited the amount, before the Trial Court on or before 31/07/2018.

[c] Amendment shall be carried out on or before 21/07/2018 and the defendant would be at liberty to file an additional written statement, if so advised.

8. Rule is made absolute in the above terms.

(Ravindra V.Ghuge, J.)