

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2064 OF 2018
(Nasirkha Gulabkha Bagwan Vs. Dr.Zakir Husain Education Society,
Shahada, through its President)

Mr.D.A.Mane h/f Mr.D.M.Pingale, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 20/02/2018

PER COURT :

1. The petitioner is aggrieved by the order dated 26/09/2017 by which the plaintiff, in RCS No.59/2014, has been permitted to amend the plaint and the prayer clause.

2. Grievance of the petitioner/original defendant is that the plaint was filed for seeking permanent injunction wherein the plaintiff contended that the Trust is in possession of the property. The defendant claims that, by an agreement to sale signed in 1992, the plaintiff/Trust received Rs.3,00,000/- from the defendant and they parted with the possession of the said land. Therefore, when the plaintiff did not pray for seeking recovery of possession, they cannot be permitted to put forth the said claim by way of an amendment.

3. Further grievance is that as the plaintiff trust parted with the

possession sometime in 1992, putting forth a prayer for seeking recovery of possession in 2017, would render such prayer barred by limitation which is of 12 years.

4. I find from the record that the plaintiff / Trust, contrary to the contentions of the petitioner, has never admitted that it has parted with the possession of the suit property or that the defendant has been put in possession. It, therefore, cannot be accepted that the possession of the suit property was admittedly handed over to the defendant, as is contended in this proceeding.

5. By application Exh.40, the plaintiff has sought to introduce the prayer for recovery of possession and for the said purpose, it is explained in the proposed two paragraphs that after the application for temporary injunction filed by the plaintiff was rejected, that the Trust has lost the possession. It is stated in the proposed paragraph that the Trust lost the possession on 04/10/2014 and around that date.

6. The Hon'ble Apex Court has concluded in several judgments that multiplicity of litigation should be avoided. In the instant case, the plaintiff has put forth a cause of action which is alleged to have

occurred during the pendency of the suit and has based its proposed prayer clause for recovery of possession on such purported development of having lost the possession. The petitioner/defendant can always enter an additional written statement pursuant to the amendment and can also pray for framing of an additional issue as regards the date on which the plaintiff could prove that it has lost possession. Naturally, the defendant can raise an issue of limitation which the Trial Court would consider in view of the amendment that is permitted and the contentions that the petitioner / defendant would put forth in its additional written statement.

7. As such, I do not find that the impugned order could be termed as being perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)