

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

15 WRIT PETITION NO. 2389 OF 2018

GORAKSH DATTATRAY DHOTRE AND OTHERS
VERSUS
VIMALBAI MACHINDRA KUNDARE AND OTHERS

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Advocate for Petitioners : Mr. Narayan B. Narwade.

Advocate for Respondent No.1 : Mr. Zafar M. Pathan.

...

CORAM : **V. L. ACHLIYA, J.**

DATE : 16th April, 2018.

ORDER:

. By this petition filed under Article 227 of the Constitution of India, the Petitioner has challenged the order dated 8th February, 2018 passed by the Civil Judge Junior Division, Shevgaon, District Ahmednagar. By the impugned order, the learned Judge of the Trial Court has allowed the application seeking amendment to the plaint (Exhibit 101).

2 Mr. Narwade, learned counsel for the petitioners assailed the impugned order with contention that the Trial Court has erred in allowing the application though the case is posted for recording of evidence. It is contended that while allowing the application, the Trial Court has overlooked the mandate of Order VI Rule 17 of the Code of

Civil Procedure. By referring proviso to Order VI Rule 17, the learned counsel submits that the Plaintiff has failed to make out a case of due diligence to entertain the application after the trial has commenced. In support of the submissions, the learned counsel has relied upon the decision of this Court in the case of ***Prakash Ratanlal @ Ratansa Kasari, Vs. Bhika Dhage and Sunil Dhage***, reported in, ***(2010) 1 Mh.L.J. 810***.

3 On the other hand, the learned counsel for Respondent - Plaintiff supported the order passed by the Trial Court. It is pointed out that the suit was filed in the year 2012. Issues were framed on 2nd August, 2014. The evidence was started on 26th November, 2017. While the trial was already commenced, the Petitioners - Defendants moved the application vide Exhibit 78 seeking amendment to written statement. By taking plea totally inconsistent to the defence taken in the suit, by way of amendment, the Petitioners - Defendants have introduced the case that they are in possession of the suit land by virtue of the written agreement of lease of 99 years granted in their favour. The application seeking amendment was rejected by the Trial Court by order dated 7th September, 2015. By the judgment and order dated 19th January, 2017 passed by this Court (Coram : S. B. Shukre,

J.), this Court has set aside the order passed by the Trial Court and allowed the application seeking amendment filed by the Petitioners - Defendants vide Exhibit 78. Pursuant to the amendment made to the written statement and altogether new case was set out in defence by defendants, it was incumbent upon Respondents - Plaintiffs to carry out necessary amendment in the plaint. In this view, the Respondents / Plaintiffs filed application (Exhibit 101) seeking amendment to plaint and also claimed additional relief and declare that the alleged agreement of lease claimed by Petitioners - Defendant Nos.7 and 8 as illegal and to cancel the same. In this background, the learned counsel submits that the order passed by the Trial Court is well within four corners of law. It was further submitted that similar argument was advanced before the Trial Court and the Trial Court has duly considered the same while deciding the application.

4 On due consideration of the submissions advanced in the light of the order passed by the Trial Court and the event occurred prior to moving application seeking amendment to the plaint filed by the Respondents / Plaintiffs, I am of the view that the order passed by the Trial Court is perfectly legal, proper and within due exercise of powers vested under Order VI Rule 17 of the Code of Civil Procedure. There

is absolutely no perversity in the order passed by the Trial Court. Proviso to Order VI Rule 17 nowhere provides absolute bar to entertain the application seeking amendment after the trial has commenced. It only lay down certain restrictions in entertaining the application after the trial has commenced. On due satisfaction that there was reasons sufficient not to make such application prior to commencement of the trial, the Court can entertain the application. In this context, it is useful to refer the decision of the Apex Court in the case of ***Abdul Rehman & Anr. Vs. Mohd. Ruldu & Ors.***, reported in, ***2012 (11) SCC 341***, wherein the Apex Court in paragraph 8 has observed as under:

"(8) The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been

sought earlier. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in *J. Samuel and Others v. Gattu Mahesh and Others*, (2012) 2 SCC 300 and *Rameshkumar Agarwal v. Rajmala Exports Pvt. Ltd. and Others*, (2012) 5 SCC 337. Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment."

5 In the instant case, it is the Petitioners / Defendant Nos.7 and 8, after the trial was commenced, moved the application seeking amendment. On rejection of the application, preferred the writ petition. By order dated 19th January, 2017, this Court has set aside the order passed by the Trial Court and allowed the application moved by the

Petitioners seeking amendment to the written statement. By amending the written statement, the Petitioners have taken the plea that they are in possession of the suit property by virtue of agreement of lease granted in their favour for 99 years by the father of original Plaintiff. In view of the plea raised for the first time by way of amendment to written statement by the Petitioners / Defendants, it was necessary for the Plaintiffs to amend the plaint and claim appropriate relief. Accordingly, the Respondents / Plaintiffs have moved the application seeking amendment to challenge the alleged lease-deed and sought consequential relief. In this view, the order passed by the Trial Court cannot be termed as perverse so as to call for interference in exercise of writ jurisdiction. I am therefore, not inclined to entertain the petition. The petition is dismissed.

[V. L. ACHLIYA, J.]

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