

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5499 OF 2017

SHRINIVAS NATHU PIMPARE AND OTHERS
VERSUS
CHANDRAKANT AMBADAS WANI

Advocate for Petitioners : Mr. S.U. Choudhari.
Advocate for Respondent : Mr. B.K. Patil.

CORAM : RAVINDRA V.GHUGE, J.
DATED : 10th August, 2018.

PER COURT :

1. By consent of the parties, this matter is taken up for hearing and according to the learned advocates the issue involved is very short.

2. The petitioners/original defendants are aggrieved by the impugned order dated 01/03/2017, passed by the appellate Court, by which, application Exhibit 91 filed by the appellant/plaintiff for causing an amendment, has been allowed. The grievance of the petitioners is that when the suit was preferred by the plaintiff only for seeking a declaration of ownership and permanent injunction, the amendment seeking introduction of the prayer for recovery of possession, cannot be entertained by the appellate Court. It would alter the cause of action. Issue of limitation is also involved. Issue of due diligence is not properly explained.

3. Reliance is placed on the judgment of the Hon'ble Apex Court in the matter of **Van Vibhag Karamchari Griha Nirman Sahakari Sanstha Maryadit (Regd.) Versus Ramesh Chander & Others [2011 AIR (SC) 41]**, to support the contention that if the introduction of an amendment is likely to throw up an issue of limitation, then the said issue of limitation has to be considered.

4. Learned counsel for the respondent original appellant/plaintiff submits that the plaintiff had sought a declaration of ownership and along with the said claim, permanent injunction was sought against the defendants, so as to prevent them from interfering in the peaceful possession of the plaintiff over the suit land. As on account of the subsequent events, the defendants have lost possession, that the prayer for recovery of possession along with prayer for seeking declaration of title of ownership, would be permissible in law. Nevertheless, in order to avoid multiplicity of litigation, the proposed amendment has been sought and if there is issue of limitation, the appellate Court may consider the same as on date of the filing of Exhibit 91 which is 27/07/2016.

5. In view of the above and upon perusing the impugned order, I do not find that the appellate court has committed any error and the said order cannot be branded as being perverse or erroneous. The contention of the defendants that the stand taken by them in the written statement that they are in possession, has not been

controverted by the plaintiff. This issue also can be dealt with by the appellate Court, since the appeal is a continuation of the suit.

6. When the plaintiff seeks a declaration of ownership and prays for permanent injunction against the defendant, a prayer based on subsequent events during which the plaintiff may be said to have lost his possession, would warrant a prayer for recovery of possession lest such plaintiff will have to move another suit for the said purpose. As such, if the issue of limitation is involved, the concerned Court can be at liberty to deal with the said aspect while deciding the proceedings.

7. In view of the above, this petition is partly allowed only to the extent of an addition to the impugned order which shall be as follows :

“The appellate Court would consider the aspect of limitation with regard to the relief sought through the proposed amendment as on date of the filing of application Exhibit 91. This issue shall be dealt with while deciding the appeal finally.”

8. The learned advocates pray that as the appeal is pending for final hearing for seven years, it could be expedited. As such, the learned appellate Court shall decide Civil Appeal No. 51/2011 as expeditiously as possible and in any case on/or before 31/03/2019.

(RAVINDRA V.GHUGE, J.)