

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7794 OF 2017

Madhukar Namdeo Shurpatne,
Age-59 years, Occu-Tax Consultant,
R/o 298/1, Navi Peth, Jalgaon,
Dist. Jalgaon

-- PETITIONER

VERSUS

1. Purushottam Vishwanath Shurpatne,
Age-52 years, Occu-Business,
R/o 298, Navi Peth, Jalgaon,
Dist. Jalgaon

2. Sunilkumar Vasantlal Mandore,
Age-52 years, Occu-Business,
R/o 13, Vivekanand Nagar,
Zilla Peth, Jalgaon,
Dist. Jalgaon

3. Rajeshkumar Vasantlal Mandore,
Age-50 years, Occu-Business,
R/o 13, Vivekanand Nagar,
Zilla Peth, Jalgaon,
Dist. Jalgaon

4. Manishkumar Vasantlal Mandore,
Age-45 years, Occu-Business,
R/o 13, Vivekanand Nagar,
Zilla Peth, Jalgaon,
Dist. Jalgaon

-- RESPONDENTS

Mr.V.D.Hon, Sr.Advocate with Mr.Ajinkya Deshmukh, Advocate for
the petitioner.

Mr.R.N.Dhorde, Sr.Advocate h/f Mr.V.R.Dhorde, Advocate for
respondent No.1.

Mr.S.A.Adhav, Advocate for respondent Nos.2 to 4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 12/06/2018

ORAL JUDGMENT :

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

2. The petitioner/original plaintiff is aggrieved by the order dated 01/04/2017 passed by the Trial Court by which his application Exhibit 47, seeking leave to amend the plaint in Spl.C.S.No.32/2013, has been rejected.

3. While issuing notice to the respondents for final disposal, this Court has granted interim protection to the petitioner in terms of prayer clause "C" by which the suit has been stayed.

4. I have considered the strenuous submissions of the learned Sr.Advocates on behalf of the petitioner and the respondents. I have considered the 9 grounds formulated by the petitioner in the memo of the petition. I have also considered the portions of the proposed amendment in application Exh.47 and have compared the same with the contents of the plaint as well as the examination-in-chief filed by the plaintiff.

5. After going through the proposed amendment and after comparing it with the contents of the plaint and the examination in chief, I find that the proposed amendment is merely put forth in a different language and the reconstructed sentences in the proposed amendment are found in the plaint, especially the proposed amendment Marathi “ई (ee)” which is sought to be added to paragraph 5 of the plaint. Some of the portions of the proposed amendment appear to be in the nature of arguments.

6. Learned Sr.Advocate for the respondents submits on instructions from some of the respondents present in the Court that the sale deed dated 20/11/2012, which is sought to be set aside by the plaintiff, can always be relied upon by the plaintiff in support of his case.

7. The Trial Court, while rejecting Exhibit 47, may not have dealt with the above fact situation. However, it has rejected the application for the reason that the proposed amendment pertains to the sale deed which is executed prior to the institution of the suit and there is no explanation in so far as due diligence is concerned. The recording of oral evidence has also commenced.

8. Considering the above, I am of the view that as the contents of Exh.47 are found in the plaint in different words, there may not be a necessity for carrying out an amendment. So also, the plaintiff can always put forth oral submissions based on the pleadings and the evidence of both the sides. Such arguments need not be pleaded. In addition to this fact situation, the sale deed, which is placed on record, can always lend support to the rival parties after its contents are proved.

9. At this juncture, learned Sr.Advocate for the petitioner submits that the Trial Court has imposed costs of Rs.1,000/- upon the plaintiff. I find that the costs have been imposed since the Trial Court has gathered an impression that the suit has been deliberately delayed and Exh.47 has not been filed with a bonafide intention. It is obvious that the suit is about 5 years of age and the date on which Exh.47 was rejected, it was about 4 years old. In this backdrop, the costs of Rs.1,000/- should not have been imposed upon the plaintiff. On this count, this petition is partly allowed and the direction of payment of costs of Rs.1,000/- is quashed and set aside.

10. Considering the above and keeping in view the cause of action emerging from the suit and coupled with the fact that the

construction of a building is at stake, the special civil suit is expedited and the Trial Court is directed to decide SCS No.32/2013 as expeditiously as possible and preferably on or before 31/01/2019. The litigating sides would co-operate with the Trial Court for the implementation of these directions and would refrain from seeking adjournments on unreasonable and trivial grounds.

11. Rule is made partly absolute in the above terms.

(Ravindra V.Ghuge, J.)