

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5940 OF 2018

**BABASAHEB DODHA PATIL
VERSUS
SOU. SUNDARBAI RAGHUNATH PATIL**

...
Advocate for the Petitioner : Shri J.R.Shah

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 19th JUNE, 2018.**

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PER COURT :

1. The petitioner is aggrieved by the order dated 26/03/2018 passed by the Trial Court in Regular Civil Suit No. 90/2012, by which, the application for amendment filed by the petitioner- plaintiff at Exhibit 37 has been rejected.

2. I have considered the submissions of the learned advocate for the petitioner and have gone through the eleven grounds formulated by him in the memo of the petition.

3. I find from the pleadings in the plaint that the plaintiff has contended in paragraph No. 7 that the plaintiff is seeking a direction to the defendant to act in accordance with

the sale-deed dated 13/06/2008. The plaintiff has stated that he desires to prefer a separate suit for seeking cancellation of the entry No. 1089 based on the said sale-deed. It is also set out in the prayer clause that the plaintiff would prefer to file a separate suit for seeking cancellation of the sale-deed. As such, the substantial prayers put forth in the plaint are in the form of seeking a direction to the defendant to act in accordance with the terms and conditions of the sale-deed and to restrain her from interfering with the peaceful possession and enjoyment of the '*Wahiwat*'.

4. By application Exhibit 37, the plaintiff has prayed for leave to amend the plaint and introduce a new prayer clause to the effect that the sale-deed dated 13/06/2008 be declared as illegal and be set aside. It is, thus, a prayer which is diagonally opposite to the prayer and the pleadings, put forth in the plaint. The Trial Court has rejected Exhibit 37 for the reason that the new prayer sought to be introduced would change the nature of the cause of action and the said prayer is likely to suffer the bar of limitation.

5. The Honourable Apex Court in the matter of *M/s Revajeetu Builders & Developers Versus Narayanaswamy & Sons & Others*, AIR 2009 SC (Supp) 2897 has laid down certain principles, which are to be considered while dealing with the application for amendment. Paragraph No. 67 which sets out these principles, is as under :-

"67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of

application."

6. As such, if the prayer sought to be introduced by way of an amendment is a completely different prayer and if the said prayer puts forth a cause of action, which is otherwise barred by the law of limitation, the amendment can not be permitted. The request of the plaintiff is, therefore, squarely covered by paragraph No. 67 in the *Revajeetu Builders Case* (supra).

7. Considering the above, 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.)

shp/-