

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.8638 OF 2017  
(Rajendra s/o Dagadu Jivrak Vs. Dagadu s/o Laxman Jivrak  
and others)

Mr.S.T.Kazi, Advocate for the petitioner.

( CORAM : Ravindra V.Ghuge, J.)

DATE : 16/07/2018

PER COURT :

1. None appears for the respondents. This petition is already dismissed as against respondent No.6. In this backdrop, I have heard the learned Advocate for the petitioner/original plaintiff, who is aggrieved by the order dated 30/01/2017 passed by the Trial Court in RCS No.638/2012 by which, application Exh.61 has been rejected. The plaintiff had sought leave to add paragraph No.7A so as to deal with the sale transaction dated 20/04/2012 in between defendant Nos.1 and 8.

2. In the light of the submissions of the learned Advocate for the original plaintiff and the record available, it appears that the plaintiff, while being cross examined, got the knowledge that defendant No.1, who is the father of the plaintiff, had sold some portion of the suit

property on the eastern side, on 20/04/2012 to defendant No.8 by executing a registered sale deed. This has also been stated in the written statement filed by the defendant. The suit has been instituted on 03/11/2012. On this premises, the Trial Court concluded that it is unbelievable that the plaintiff was not aware of such transaction entered into by his father. Exhibit 61 is also rejected for the reason that the written statement would divulge the details about the transaction and hence the plaintiff should have preferred the application for amendment diligently in view of the proviso to Rule 17 under Order VI of the CPC.

3. Despite the above fact situation, it cannot be ignored that the suit was not too old so as to conclude that the plaintiff would delay the disposal of the suit or would reverse the clock by many years and the suit would have to be relegated to the stage of completing the pleadings. As the delay was not inordinate, as the amendment would not change the nature of the suit and since the amendment would enable the plaintiff to put his best case forward, such amendment could have been allowed by imposing costs.

4. In view of the above, this petition is partly allowed. The impugned order dated 30/01/2017 is quashed and set aside and

application Exh.61 is allowed by imposing costs of Rs.10,000/- (Rs. Ten thousand only).

5. As the respondents have not participated in the hearing of this petition today and by the consent of the petitioner, the said costs amount of Rs.10,000/- (Rs.Ten thousand only) would be donated to the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of **“Dean, Government Medical College and Hospital, Aurangabad CSR Fund”**), on or before 04/08/2018 and tender a receipt of the said deposit before the Trial Court on or before 10/08/2018. The amendment shall be carried out after depositing the amount and in any case on or before 10/08/2018.

( Ravindra V.Ghuge, J.)