

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

WRIT PETITION NO. 10697 OF 2017

SHAIKH MAHEMOOD SHAIKH AHMAD AND OTHERS
VERSUS
NAIMKHAN IBRAHIM KHAN AND ANOTHER

...
Advocate for the Petitioners : Shri S.B.Madde h/f Shri Chawre Anand.
Advocate for Respondent 1 : Shri Shaikh Mobin H..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st November, 2018

Oral Order:

1 The Petitioners/ original Plaintiffs are aggrieved by the order dated 13.02.2017 passed by the Trial Court by which, the application Exhibit 72 seeking leave to amend the plaint in RCS No.86/2008 (old No.924/2007) and introduce new grounds and new prayers, has been rejected.

2 The learned Advocate for the Petitioners has strenuously criticized the impugned order. The contention is that the suit has been filed for seeking perpetual injunction and recovery of possession. The suit property admeasures 14 Acres and 15 Gunthas. The Plaintiffs got the knowledge in 2013 that Defendant No.2 has sold the land to Defendant No.1 and his brother, who have constructed two rooms on 1 acre of land,

which was forcibly taken from the Plaintiffs. As soon as the Plaintiffs got the knowledge of such forcible dispossession and construction of two rooms, they have moved Exhibit 72 on 17.01.2013.

3 The grievance of the Petitioners is that the Trial Court has failed to consider that the amendment has to be allowed to avoid multiplicity of litigation and a liberal view is to be taken while considering grant of leave to amend. Reliance is placed upon the judgments of this Court in the matters of *Harishkumar Sachdeva vs. Madhavi Jain and others, 2013 (6) Mh.L.J. 38* and *Kamlesh Jagannath Suryavanshi and another vs. Kalyan Shishir Kumar Dutta and another, 2013 (6) Mh.L.J. 193*.

4 The learned Advocate for Defendant No.1 submits that he and his brother have purchased 1 Acre of land from Defendant No.2 by a Sale Deed dated 09.02.1998. By virtue of the said sale deed, Defendant No.2 has put Defendant No.1 and his brother in possession of the said property. RCS No.86/2008 (Old No.924/2007) was filed by the Petitioners/ Plaintiffs on 09.10.2007. Presuming that the Plaintiffs did not have the knowledge about the sale deed, Defendant No.1 entered their Written Statement on 12.11.2007 specifically stating in paragraph 8 that Defendant No.1 and his brother have purchased the said land from Defendant No.2, have acquired the possession thereof and have become the owner of the said land. The said portion of the land is described in

paragraph 8 of the Written Statement.

5 Despite the same, the Plaintiffs did not initiate any steps with regard to the possession having been taken by Defendant No.1 and his brother. It was after the passage of six years, that the said application Exhibit 72 has been filed praying for leave to introduce a new cause of action and new prayers. The prayer for declaration that, the sale deed is not binding upon the Plaintiffs, is also put forth, which would be barred by limitation as the law prescribes 12 years of limitation for seeking a declaration that the sale deed is not binding on the plaintiff and for possession of the immovable property.

6 He further submits that the application seeking temporary injunction was pressed by the Plaintiffs despite the pleadings set out in the written statement and the said application was rejected by the Trial Court upon being convinced that the possession is already with the said Defendant. The miscellaneous civil appeal preferred by the Plaintiffs before the first Appellate Court has also been rejected. Reliance is placed on the judgment delivered by this Court in the matter of ***Dnyandev Ramlal Patil vs. Sanjeev Bhavlal Patil and others, 2014 (6) ALL MR 657.***

7 Having considered the submissions of the learned Advocates for the respective sides, I have gone through the petition paper book with their assistance. It requires no debate that an application for amendment

is to be considered liberally. However, the parameters laid down by the Honourable Supreme Court in the matters of **Revajeetu Builders and Developers vs. Narayanaswamy & Sons and Others**, (2009) 10 SCC 84 and *Chakreshwari Construction Pvt.Ltd. vs. Manohar Lal*, 2017(5) *Mh.L.J.* 195 (SC), would make it clear that if new prayers and new cause of action is being introduced by the litigant, which cause of action is otherwise barred by limitation if an independent suit is to be lodged, such an amendment cannot be allowed. Similarly, if the amendment is based on subsequent events and the character of the suit would not be altered if subsequent events are sought to be placed on record, the amendment could be allowed. A pragmatic approach is to be adopted while considering the applications for amendment and the court must endeavour to avoid taking a pedantic view.

8 In the instant case, even if it is assumed that the Plaintiffs did not have the knowledge of the sale deed dated 09.02.1998, till they filed the suit on 09.10.2007, Defendant No.1 has devoted a large paragraph No.8 in taking up the contention that he and his brother have purchased the land admeasuring 1 Acre from Defendant No.2 and on the basis of the said sale deed dated 09.02.1998, they are in possession of the said property. This was sufficient knowledge to the Plaintiffs. Even thereafter, the Plaintiffs proceeded to pursue their temporary injunction application, which was rejected on 23.10.2012 and subsequently, their appeal was also

rejected. It is only in 2013, after 6 years, that the Plaintiffs sought an amendment.

9 In the above backdrop, it needs to be assessed as to whether, the amendment sought by the Plaintiffs can be said to be limited only to the construction of two rooms. It is obvious from Exhibit 72 that the Plaintiffs seek a declaration that the sale deed dated 09.02.1998 is not binding upon them. They seek possession of the said land admeasuring 1 acre and as such, they have put forth the prayers to these extents.

10 In this fact situation, the view taken by this Court in ***Dnyandev Patil (supra)*** in paragraphs 22, 24 and 25 would become squarely applicable as these Plaintiffs were made aware that Defendant No.1 and his brother have purchased the said portion of the suit property in 1998 and were occupying the said land for nine years prior to the filing of the suit. Had the Plaintiffs preferred their application for amendment immediately after filing of the Written Statement, the said application could have been looked at with a different perspective.

11 Paragraphs 22, 24 and 25 of the said judgment in ***Dnyandev Patil (supra)*** read as under :-

"22. Distinguishably, in the present case, the defendants had declared that they were in possession, through their written statement, on 9.10.2006. The 7/12 extracts indicates that the defendants were cultivating the land, which could not have been possible for them without being in possession. Though this Court has no intention

of deciding as to who is in possession in the present Writ petition, the petitioner could have moved an application for amendment looking to the fact that the defendants had declared that they were in possession and the petitioner was seriously apprehensive about their forcible acts. Yet, an application for injunction was not filed inasmuch as the plaint was not sought to be amended."

"24. An application is filed on 20.3.2013 for seeking amendment. In the said application, it is nowhere pleaded, as to when did the petitioner acquire the knowledge of his dispossession and as regards due diligence on his part in bringing this to the notice of the Court at the earliest. There are no such pleadings in the application Exhibit 82. Moreover, the suit is not for injunction and no application for temporary injunction was filed, as was the case in *Dela (supra)* and *Shakuntala (supra)*."

"25. In the light of the above, no doubt, the petitioner, by the rejection of his application for amendment, will have to take recourse to law and avail of such a remedy as may be available to him in law. There is a possibility that he would have to initiate a suit for redressal of his grievance. However, the ratio laid down by this Court in the cases of *Dela* and *Shakuntala (supra)* is based on altogether different set of facts. In the instant case, laxity, negligence and lack of due diligence on the part of the petitioner have, therefore, led to the passing of the impugned order, which I do not find to be perverse and unsustainable in law."

12 It also cannot be ignored that in Exhibit 72, the Plaintiffs have put forth a stand, which can only be an act of pretense, that Defendant No.1 has forcibly taken possession of 1 acre of land on 06.01.2013. Exhibit 72 was filed on 17.01.2013. It is contended that in this period of 11 days, two rooms were constructed and the Defendants started

occupying the said two rooms. This contention is quite unbelievable and therefore, appears to be mere pretense.

13 In the above backdrop, I do not find that the Trial Court has committed any error in rejecting the application Exhibit 72. This Writ Petition, being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)