

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11325 OF 2017
(Rafiq Ahmed s/o Mohammed Osman Vs. Mohd. Ali s/o Yusuf
Ali and another)

Mr.R.G.Joshi and Mr.A.R.Ambari, Advocate for the petitioner.
Mr.N.T.Tribhuwan, Advocate for respondent No.1.
Mr.A.D.Kasliwal, Advocate for respondent No.2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 11/07/2018

PER COURT :

1. When the learned Advocate for the petitioner was heard on 18/09/2017, this Court had passed the following order :-

“1. The petitioner seeks to challenge the impugned order dated 24/01/2017 by filing this petition on 09/08/2017, by which application Exh.25, seeking an amendment, has been rejected.

2. Upon considering the submissions of the learned Advocate for the petitioner and on perusing the application Exh.25, it appears that the petitioner/plaintiff is seeking introduction of 9 large paragraphs from paragraph No.19-A to 19-I in the form of an amendment. It also appears from the contents of the said paragraphs that events that have occurred in 2002, 2007, 2008 and 2009 are sought to be brought on record. Contention is that as respondent No.2 was subsequently added in the appeal

proceedings after the suit was earlier decreed on 28/08/2002, that the petitioner is required to bring on record certain factors in relation to the added respondent.

3. *Considering the above, I called upon the learned Advocate for the petitioner that I would consider his bonafides if he is willing to deposit Rs.20,000/- before the Trial Court and on that condition, a notice could be issued. Learned Advocate submits that the said amount would be deposited.*

4. *By recording the above statement, issue notice to the respondents, returnable on 03/11/2017 on the condition that the petitioner shall deposit an amount of Rs.20,000/- before the Appeal Court in RCA No.104/2014. In the event of failure to deposit the said amount, the Appeal Court shall proceed to decide the pending appeal on its own merits. If the amount is so deposited, the Appeal Court would adjourn the said proceedings until the returnable date in this matter.*

5. *The petitioner shall tender a copy of the petition paper book on or before 25/09/2017 for issuing notice, failing which, this petition shall stand dismissed without reference to the Court."*

2. I have heard the learned Advocates for the litigating sides at length.

3. The contention of the petitioner is that RCS No.1131/2001 was earlier decreed in 2002. Thereafter, it was restored under the orders of the Court in 2010. All the proposed amendment paragraphs from 19-A to 19-I pertain to the events that have occurred in between 2001 to 2005. Since the suit was not in existence, there was no scope to introduce any amendment earlier. After the suit was restored to the Trial Court in 2010, that the petitioner got an opportunity of putting forth the proposed amendment.

4. Learned Advocate appearing on behalf of the respondents submits that the petitioner also desires a declaration that the sale deed, executed by one Hussainabee in favour of the original respondent, dated 19/07/2005 is void and not binding upon the petitioner/appellant. The said prayer is struck by the law of limitation and even a separate suit cannot be permitted since it would be barred by limitation. It is, therefore, contended that when an independent suit would be barred, the petitioner seeks to raise the said cause of action by way of the proposed amendment.

5. The law on amendment is now settled in the recent judgment of the Hon'ble Apex Court in the matter of Revajeetu Builders and Developers Vs. Narayanaswami and Sons [(2009) 8 M.L.J. 907 (SC)]

and Chakreshwari Constructions Pvt.Ltd., Vs. Manohar Lal [2017(5) SCC 212]. Any cause of action, which is otherwise barred by limitation and cannot be entertained through a separate suit, cannot be raised through an amendment in an existing suit on the ground of avoiding multiplicity of litigation.

6. I find from application Exh.25 vide which the petitioner sought leave to amend the plaint, that though the incidents or events that have occurred in between 2001 to 2007 and the suit having been restored on 19/07/2010, neither has the petitioner moved the amendment application with promptitude, nor does Exh.25 indicate any reason as to why the petitioner has not proposed the amendment earlier. Exhibit 25 is equally silent as to the source of the information since the petitioner claims that he had no knowledge about all the events that are mentioned in the proposed amendment. The circumstances which prevented the petitioner from proposing the amendment are also not set out. A conspicuous silence is maintained on the aspect of due diligence. It is only prayed that since the suit was restored by order dated 19/07/2010, the application moved on 16/11/2016 be allowed.

7. There is no dispute that the parties have to be granted

adequate opportunity of putting forth their best evidence. However, neither can a litigant be permitted to introduce a cause of action through an amendment which is otherwise barred by the Law of Limitation, even if a fresh suit is to be filed.

8. In the light of the above, I do not find that the impugned order dated 24/01/2017 could be termed as being perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed. The petitioner is permitted to withdraw the amount of Rs.20,000/- deposited before the Appellate Court alongwith accrued interest, if any.

9. The pending civil application, does not survive and stands disposed of.

10. The request to stay this order for a period of 4 weeks, in view of the reasons assigned, is rejected.

(Ravindra V.Ghuge, J.)