

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.297 OF 2014
(Sarjerao Digambarrao Deshmukh Vs. The Collector, Nanded and others)

Mr.U.B.Bilolikar, Advocate for the petitioner.
Mr.M.D.Narwadkar h/f Mr.M.V.Deshpande, Advocate for respondent No.4.
Mr.S.R.Yadav-Lonikar, AGP for respondent Nos. 1 to 3.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 04/01/2018

PER COURT :

1. The petitioner/original plaintiff is aggrieved by the order dated 15/10/2013 by which the Trial Court has rejected application Exh.105 in RCS No.55/2010. The request of the plaintiff for leave to amend was therefore refused. By order dated 15/01/2014, passed by this Court, the suit was stayed and the said interim relief continues even today.

2. I have heard the learned Advocates on behalf of the petitioner and respondent Nos. 1 to 4. Learned Advocate for respondent Nos. 5 and 6 is absent.

3. The grievance of the petitioner is that as a consequential amendment was necessitated on account of the addition of defendant No.6 subsequently, by her application for intervention, Exh.105

should have been allowed by the Trial Court. Exh.105 has been rejected by the impugned order since the cross examination of the plaintiff was over and thereafter the application for seeking amendment was filed. As the plaintiff did not explain the delay under the proviso to Order 6 Rule 17 of the CPC, Exh.105 was rejected.

4. Learned Advocate for respondent Nos. 1 to 3 has strenuously defended the impugned order. He contends that the proposed amendment is with regard to "Tadjod Patra" between defendant No.4 and defendant No.6 alongwith the 3 daughters of defendant No.6. The said "Tadjod Patra" was effected on 26/11/2009 and the suit was filed in 2010. The plaintiff was aware of the "Tadjod Patra". He did not add defendant No.6 as a defendant while preferring the suit. Even after defendant No.6 moved an application for intervention which was allowed, the plaintiff was silent and the cross examination of the plaintiff was concluded in which he has given an admission that the plaint does not contain any pleadings about the "Tadjod Patra".

5. He, therefore, submits that this petition deserves to be dismissed with costs. In the alternative, he submits that if the

Court is inclined to entertain this petition, heavy costs may be imposed and the share of the costs towards respondent Nos. 1 to 3 who are State Authorities, can be donated to the Advocate's Association of the Bombay High Court, Bench at Aurangabad.

6. It cannot be ignored that the proviso to Rule 17 below Order 6 was introduced by an amendment in 2002. The intent and object of the said amendment was to ensure that a delay on the part of any litigating sides in causing an amendment, should not be entertained. The issues were cast on Exh.52 on 16/02/2012. However, it needs mention that defendant No.6 was allowed to intervene by an order on Exh.54 which was passed on 05/11/2012. The plaintiff has filed an application Exh.105 on 21/08/2013 suggesting the proposed amendment below paragraph No.2-a, only with regard to the "Tadjod Patra", which is already on record and has been exhibited. The said document is therefore bound to be read in evidence and would be considered by the Trial Court. The suit is for declaration of ownership and perpetual injunction.

7. In the above backdrop, since defendant No.6 was permitted to be arrayed as a defendant, I do not find that Exh.105 was filed after such a delay, which could be termed as being inordinate. So also, if

this opportunity of putting forth certain pleadings on the “Tadjod Patra”, which is already on record, is lost, it would cause an irreparable harm to the rights of the plaintiff concerning the immovable property in land Gat No.239 admeasuring 1 hectre 31R. The hardships caused to the defendants can be softened by imposing costs.

8. Considering the above, this petition is partly allowed. The impugned order dated 15/10/2013 is quashed and set aside and application Exh.105 is allowed on the following conditions :-

[a] The petitioner shall deposit costs of Rs.9,000/- (Rs.Nine Thousand only) before the Trial Court on or before 05/02/2018 and shall carry out the amendment on the same day on which the costs is deposited.

[b] The petitioner shall deposit costs of Rs.5,000/- (Rs.Five thousand only) with the Advocate's Association of the Bombay High Court, Bench at Aurangabad on or before 31/01/2018 and shall produce a receipt before the Trial Court on or before 05/02/2018.

[c] No extension of time shall be sought by the petitioner/plaintiff.

[d] Additional oral evidence, if so advised, may be led by the petitioner/plaintiff on or before 28/02/2018 and no adjournment would be sought. This evidence will be only with regard to the “Tadjod Patra”.

[e] Needless to state, the defendants would be at liberty to lead their evidence thereafter.

[f] Respondent Nos. 4, 5 and 6 in this petition shall withdraw the said costs without conditions in equal proportion.

(RAVINDRA V. GHUGE, J.)