

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12853 OF 2017

PRASHANT AMBADAS DODKE AND OTHERS
VERSUS
PRABHAKAR KHANDERAO BHOSLE AND OTHERS

...
Advocate for Petitioners : Shri Patil Hanmant V.
Advocate for Respondents : Shri Manale Satish S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 09, 2018

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PER COURT :-

1. The petitioners / plaintiffs are aggrieved by the order dated 8.9.2017, by which, application Exhibit 161 has been rejected by the trial Court disallowing the plaintiffs from adding a prayer which they have inadvertently left out, though the said proposed prayer finds its origin in the claim title set out in the plaint.

2. I have considered the submissions of the learned Advocates for the respective sides at length.

3. The plaintiffs have titled their claim as being a suit for possession of 10 acres of land on the Southern side in land S.No.64, situated at village Matola, Tq. Ausa and for declaration

that the compromise decree dated 3.5.1986 in RCS No.176 of 1986 entered into by the deceased father of these petitioners be declared as null and void and not binding on these plaintiffs.

4. The learned counsel for the defendants relies upon the judgment in the matter of Harinarayan G. Bajaj and another Vs. Vijay Agarwal and others [2012 (2) Mh.L.J.106], contending that such amendment would be struck by Article 137 of the Limitation Act since the limitation would be only three years from the date when the right to apply accrues. I find that though the suit is now numbered as 391 of 2000, there is no dispute that it was filed as Special Civil Suit No.230 of 1994 and the new number was pursuant to the transfer of the proceedings from Latur to Ausa.

5. The plaintiffs have also tendered their affidavits in lieu of examination in chief.

6. The trial Court has rejected Exhibit 161, purely on the count that a belated request is putforth by the plaintiffs, which is affected by the proviso introduced in 2002 to Rule 17 under Order VI of the Code of Civil Procedure. However, it appears that the plaintiffs did not cite the judgment of this Court (Coram

: B.R.Gavai,J.) in the matter of Sumita Pradhipkumar Dixit Vs. Pushpadevi G./ Makharia and others [2011 (3) Mah.L.J.755], that the said amendment effected on 1.7.2002 would not apply to the case filed prior to the said date.

7. Moreover, it is obvious that though the plaintiffs have set out their claim title as noted above, they seem to have failed to put forth a formal prayer seeking the declaration in tune with the claim title. It is categorically submitted by the plaintiffs that their prayers proposed through the amendment will not travel beyond the claim title set out in the plaint.

8. Considering the above, this petition is partly allowed. The impugned order dated 8.9.2017 is quashed and set aside and application Exhibit 161 is partly allowed on the following conditions:-

(A) The petitioners shall deposit total costs of Rs.10,000/- before the trial Court on/or before 30.7.2018.

(B) The original defendants shall withdraw the said costs in equal proportions without conditions.

(C) The petitioners shall not seek extension of time

to deposit the costs.

(D) The amendment proposed should be carried out on/or before 3.8.2018 and the trial Court will not consider the proposed amendment beyond the claim title set out in the suit.

(E) The proposed amendment shall be considered subject to the law of limitation from the date of its filing which is 8.8.2017 and the trial Court shall frame an additional issue as to whether the said prayer introduced from 8.8.2017 is struck by the law of limitation under Articles 58 and 59 of the Limitation Act.

(RAVINDRA V. GHUGE, J.)

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