

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10310 OF 2013

DIGAMBER BABARAO AAGLAVE
VERSUS
MADHAV DATTATRAY SHINDE (AAGLAVE) AND OTHERS

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Advocate for Petitioner : Shri Pathan Hamzakhan I.
Advocate for Respondents : Shri Narwadkar Mrigesh D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 10, 2018

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PER COURT :-

1. The petitioner / plaintiff is aggrieved by the order dated 21.10.2013, by which, application Exhibit 24 filed by him seeking amendment in RCS No.89 of 2012 has been rejected.

2. The contention of the petitioner is that he had taken a hand loan from a third party, by name, Kishan Nivrutti Chilpimpare. When the suit was preferred on 18.4.2012, defendant No.1 was arrayed as he claimed to be the owner of a land, which the plaintiff had entrusted to the third party in view of the hand loan taken. By virtue of the bond executed on 3.2.1997, by the plaintiff in favour of the third party, land admeasuring 28 Ares in Gut No.8 was a subject matter of a nominal sale to the third party. By a second sale deed, dated 23.2.2012, the third party sold the land to defendant No.1. It was in this backdrop that the application Exhibit 24 was filed, by which, the plaintiff sought leave to

delete one portion of paragraph No.02 and insert the proposed paragraph No.2, set out in Exhibit 24.

3. Learned Advocate for respondents 1 to 3 has supported the impugned order by contending that there are no pleadings in the application Exhibit 24. There is no justification for deleting a decisive portion of paragraph No.2 of the plaint. There are no pleadings on due diligence. Date of the earlier sale deed is not mentioned and it is also not proposed as to what declaration does the plaintiff desires with regard to the sale deed that he executed on 3.2.1997 to the third party.

4. I find that Exhibit 24 does not even contain a statement as to which is the proposed amendment. It is to be inferred from the oral submissions that paragraph No.2 of Exhibit 24 is to be presumed to be the proposed amendment.

5. It is obvious that the plaintiff had the knowledge of the sale deed dated 3.2.1997 that was executed by him in favour of the third party. In the plaint, the plaintiff has sought injunction and has sought quashing of the sale deed dated 23.2.2012 executed by the third party with defendant No.1. Having full knowledge of the sale deed, by which, the petitioner entered into a sale transaction with the third party, neither was the third party arrayed as a defendant, nor was it

specifically prayed that the said sale deed dated 3.2.1997 be declared as void and not binding upon the plaintiff.

6. The suit is filed on 18.4.2012. By inference, the petitioner desires to question the sale deed dated 3.2.1997. Article 58 of the Limitation Act would cause a bar to such challenge even as on the date of filing of the suit. Exhibit 24 does not bear out any pleadings to that extent. The proposed paragraph does not set forth a specific grievance. A statement made in the plaint is now sought to be deleted. There is no whisper in Exhibit 24 as regards due diligence.

7. Considering the above, I do not find that the trial Court has committed any error in rejecting Exhibit 24 by the impugned order. Though the trial Court has focused merely on the aspect that the trial has commenced as recording of oral evidence is in progress, as a ground for rejection of Exhibit 24, I find that even the ground canvassed in this petition is not entertainable in view of there being no specific pleadings in Exhibit 24.

8. In view of the above, this petition being devoid of merits, is dismissed.

(RAVINDRA V. GHUGE, J.)

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