

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.454 OF 2018
(Azimabi Abdul Quadar and others Vs. Mohd.Ejas s/o Mohd.Eliyas
and others)

Mr.A.G.Godhamgaonkar h/f Mr.M.D.Godhamgaonkar, Advocate for
the petitioners.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 15/01/2018

PER COURT :

1. The petitioners who are original defendant Nos. 1 to 5 are aggrieved by the order dated 30/01/2017, by which the Trial Court has permitted the plaintiffs to amend their suit by introducing 3 prayers on the basis of the pleadings set out in the plaint.

2. The strenuous contention of the learned Advocate for the petitioners is that by the proposed 3 prayers, the plaintiffs seek to render 3 judgments dated 12/09/1989 in RCS No.693/1989, 29/01/1990 in RCS No.694/1989 and 08/09/1989 in RCS No.695/1989, a nullity.

3. Mohd.Qasim, who was the owner of the properties mentioned in RCS No.170/2014, had executed a "hibbanama" (Gift Deed) in

favour of his 3 daughters Zainabee, Azimabee and Raziyabi. Based on the "hibbanama", these 3 daughters had preferred RCS Nos.693/1989, 694/1989 and 695/1989. Mohd.Qasim filed a consenting written statement in all the 3 matters and had got the 3 suits decreed instantly. It is contended that by the impugned order, amendment is permitted to question the 3 judgments in the said 3 suits and which is not permissible in the light of the Law laid down by the Hon'ble Apex Court in the matter of A.K.Gupta and Sons Ltd.,Vs. Damodar Valley Corporation [AIR 1967 SC 96] and in the matter of Muni Lal Vs. The Oriental Fire and General Insurance Company Ltd., and another [AIR 1996 SC 642]. Learned Advocate has contended that when the nature of the suit is completely changed, an amendment cannot be permitted. The proposed prayers sought to be introduced by the amendment vide application Exh.49, are aimed at altering the cause of action. The suit has been preferred for partition, separate possession and for perpetual injunction. Hence, the amendment application should have been rejected by the Trial Court.

5. I find from the pleadings in the plaint that the suit property has been described and the plaintiffs have sought possession of 18.20% share in the said suit. It was through the written statement

filed by these petitioners that it has come to light that 3 suits were instituted by the daughters of Mohd.Qasim in 1989 on the basis of a Gift Deed. By a consenting written statement, the seal of approval was obtained from the Trial Court in the judgments and decree in these civil suits. This was never known to the plaintiffs in RCS No.170/2014. They were never made a party to the said 3 suits in 1989.

6. It was in the above backdrop that the application for amendment was filed on the basis of the pleadings of the parties on record so as to make formal prayers seeking a declaration that the said judgments and decree of 1989 would not be binding upon the present plaintiffs as they were collusive decrees obtained by mutual consent of the parties.

7. The Hon'ble Apex Court has laid down the law that the merits of the amendment are not to be scrutinized. The endeavour should be to avoid multiplicity of litigation. If the issue introduced by the amendment suffers the bar of limitation, that aspect is always to be kept open for the Trial Court to consider. So also, the defendants can file their written statements for opposing the amendment.

8. By the impugned order, the Trial Court has noted that the petitioners herein have already filed their written statements indicating that the plaintiffs are challenging the decrees of 1989. Hence issue No.2 with regard to the challenge of the plaintiffs on the point of limitation has already been framed before the amendment was allowed. Similarly, issue No.7 as to whether the defendants proved that Mohd.Qasim had gifted the suit property to his 3 daughters, was also framed prior to allowing of the amendment. In this backdrop, it cannot be said that the permission granted to the plaintiff to put forth formal prayers, on the basis of the already existing pleadings, would alter the cause of action. Needless to state, the Trial Court would surely consider whether the suit is barred by limitation which is a mixed question of facts and law, in view of issue no.2 having been cast.

9. Taking into account the above aspects and the fact that the amendment has been permitted almost a year ago, this petition being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)