

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 WRIT PETITION NO. 13810 OF 2017

ANAND BHIMRAO ALTE THRO POWER OF ATTORNEY
BHIMRAO GANPATRAO ALTE
VERSUS
DATTU PANDHARI JAGTAP AND OTHERS

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Advocate for Petitioner : Mr. V. D. Godbharle
Advocate for Respondents no.1 to 4 : Mr. S. A. Wakure
Advocate for Respondent no.5 : Mr. S. S. Gangakhedkar

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CORAM : V. K. JADHAV, J.
DATED : 28th MARCH, 2018

PER COURT:-

1. By consent of parties, heard finally at admission stage.
2. The petitioner/original plaintiff had filed application Exh.82 seeking amendment in the plaint and by order dated 07.07.2016 the 4th Joint Civil Judge (Junior Division), Osmanabad has allowed the said application, subject to costs of Rs.200/-. Thereafter, the petitioner/original plaintiff has filed application Exh.86 pointing out to the court that even though application Exh.82 seeking amendment came to be allowed by the court, the incorporation of the prayer in consonance with the

amendment as permitted by the court along with valuation and the court fees is required to be allowed. However, the trial court by impugned order dated 19.09.2017 has rejected the said application Exh.86. Hence, this writ petition.

3. Learned counsel for the petitioner/original plaintiff submits that the order passed by the trial court below Exh-82 is not challenged by the respondent/defendant and in para No.5 of application Exh.82, the petitioner/plaintiff has sought proposed amendment by way of insertion of para no.7-A in the plaint, wherein it has been specifically contended that it may be declared that decree in Regular Civil Suit No.199 of 2001 is not binding on the rights of the plaintiff. Learned counsel submits that in view of the same, if application Exh.86 is not allowed, the very purpose of carrying out amendment as allowed by the court by order passed below Exh.82, would be meaningless.

4. Learned counsel for the respondents submits that the petitioner/plaintiff has failed to carry out the amendment for addition of the prayer and also failed to implead the vendor as party defendant in the present suit and as such application

Exh.86 is meaningless and even though the said prayer is incorporated, the same would have no effect at all.

5. On perusal of contents of application Exh.82 and the order passed thereon by the trial court, it appears that the trial court has permitted the petitioner/original plaintiff to carry out the amendment by insertion of new para No.7-A in the plaint. On perusal of said para 7-A, it appears that the petitioner/ plaintiff has specifically contended that defendant Nos. 1 and 4 by joining hands with defendant No.5 compromised and got decree in Regular Civil Suit No. 199 of 2001 in the year 2013 and the said compromise has been carried out only with an intention to deceive the petitioner/plaintiff. It has been also contended in the said new para No.7-A , by way of amendment, that the above said decree passed in Regular Civil Suit No. 199 of 2001 is not binding on the rights of the plaintiff. It has also been stated that the said Regular Civil Suit No.199 of 2001 was not restored against the vendor of the plaintiff. In view of the same, the petitioner/plaintiff has filed application Exh.86 for carrying out the amendment in the claim, valuation, court fees and prayer clause of plaint in terms of order passed below Exh.82.

Admittedly, the other side has not challenged the order passed below Exh.82 and once the trial court has allowed application Exh.82 in terms of its prayer clause and accordingly accepted the insertion of new para no.7-A in the plaint, consequently amendment by incorporating of specific prayer in the prayer clause and also amendment in the valuation and court fees need to be permitted.

6. I do not understand as to why the trial court has rejected application Exh.86. Even the submissions made on behalf of respondents/defendants are considered, at the most the petitioner/plaintiff would fail in his prayer seeking declaration that the compromise decree passed in the said Regular Civil Suit no.199 of 2001 is not binding on the rights of the plaintiffs. However, in terms of the order passed below Exh.82, the subsequent amendment, which is formal in nature is also required to be allowed. Hence, I proceed to pass the following order.

ORDER

- I) Writ petition is allowed.
- II) The impugned order below Exh.86 dated 19.09.2017

in Regular Civil Suit No. 451 of 2012 passed by 4th Joint Civil Judge (Senior Division), Osmanabad is hereby quashed and set aside.

- III) Application Exh.86 is allowed in terms of its prayer clause.
- IV) Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

vsm/