

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 5693 OF 2018

Dr. Suhas Shriram Bavikar and another .. Petitioners

versus

Mazharulla Khan s/o Amanulla Khan and anr. .. Respondents

Mr. Shrikant V. Adwant, Advocate for petitioners

CORAM : SUNIL P. DESHMUKH, J.

DATE : 13th June, 2018

ORDER :

1. Heard learned counsel Mr. Shrikant Adwant for petitioners - original defendants no. 2 and 3.

2. Learned counsel Mr. Adwant submits that impugned order dated 09-11-2017 passed by learned 27th Joint Civil Judge, Junior Division, Aurangabad, allowing respondent no. 1 - original plaintiff's application under Exhibit - 40 seeking production of certain documents and consequent amendments to plaint in regular civil suit bearing no. 228 of 2017 are unsustainable on several counts. He submits, amendment application has been moved by plaintiff soon after defendants had filed their written statement, realizing that suit as had been filed is unlikely to succeed. He contends that the

plaintiff had been aware of all the facts and documents when the suit was originally filed in March, 2017 and yet had failed to place the documents on record and now by way of amendment those are sought to be produced.

3. He submits that it cannot be said that none of the facts or documents sought to be placed on record were not in the knowledge or possession of the plaintiff. He purports to refer to page 77 of writ petition which is an application dated 03-02-2017 by plaintiff seeking condonation of delay in filing appeal before the Deputy Director of Land Records. He submits, that the very same documents, which are sought to be produced under Exhibit-40, were referred to in the application dated 03-02-2017 and yet it is being claimed that the documents have come in plaintiff's possession in June, 2017.

4. Learned counsel Mr. Adwant vehemently submits that reasserting right to suit property, the amendment seeks to incorporate of unregistered documents, however, there is no date given of said documents nor any particulars, such as, boundaries, area etc.

5. He further contends that unregistered documents had not seen light of the day at any point of time before amendment application had been moved or for that matter the documents had ever been subsisting before order had been passed. According to learned counsel, this is a new theory being taken up discreetly making up for deficiencies in asserting rights to the property.

6. With exquisite flair he submits, amendment sought is devious way of asserting title to the property and under the circumstances to such a plaintiff who does not appear to be honest or it may be said that he has not approached the court with clean hands, discretion ought not to have been exercised in his favour and the application ought not to have been allowed.

7. Learned counsel submits, circumstances and conduct of the plaintiff reflect that the plaintiff under the device of application for amendment, purports to remove material deficiencies in the plaint which would cause prejudice to the defendant and the plaintiff in the process gains an advantage.

8. Learned counsel further refers to a decision of the supreme court in the case of *Mashyak Grihnirman Sahakari Sanstha*

Maryadit vs. Usman Habib Dhuka and others, reported in (2013) 9 S.C.C. 485 particularly putting emphasis on observations as are appearing under paragraphs no. 7 and 8 therein and submits that situation in present matter comes quite close to that in the case cited. He submits, the supreme court under said judgment had declined amendments sought by the plaintiff therein and in the circumstances while it emerges that present plaintiff too while being in the know of facts and documents when suit was originally instituted had skipped to refer to the same in the plaint and is now trying to have the same produced and to take its benefit.

9. Trial court under order dated 09-11-2017, had allowed application Exhibit – 40 after hearing parties. The trial court while granting application has referred to a judgment of the apex court in the case of *Revajeetu Buildings and Developers v. Narayanaswamy and Sons and others*, reported in (2009) 10 SCC 84 giving guidelines about the aspects which may have bearing while considering and dealing with application for amendments and has further considered that present plaintiff had received copies of the documents like *khastra patrak* and 7 x 12 extract on 17-06-2017, purportedly supporting claimed ownership over suit property. The plaintiff had

considered it necessary to strengthen his claim of ownership over suit property. The trial court further considered that while it was the case of defendants that the plaintiff had been aware of the facts and documents before institution of suit and had already been in possession of the same, the plaintiff asserts ownership over suit property with reference to documents received at his end as claimed in June, 2017 and may be imperative to be consider the same for proper adjudication of the suit. The suit had been pending at the stage of hearing of temporary injunction application. Thus, in its discretion, the court considered it appropriate to allow the application.

10. In present matter, it may be relevant to consider that;

Suit has been instituted on 17-03-2017 by respondent no.1 – original plaintiff seeking injunction against writ petitioners – original defendants no. 2 and 3 from causing interference with plaintiff's claimed possession over suit property.

Petitioners had filed their written statement in the suit on 12-06-2017. Soon thereafter, on 17-06-2017 amendment application Exhibit-40 had been lodged by plaintiff.

In the application Exhibit – 40, circumstances and exigency have been claimed in which suit has been instituted without documents.

11. Going by the averments as were subsisting before amendment was allowed in paragraphs no. 2 and 3 of the plaint and the ones sought under the amendments do not appear to be inconsistent in any way save that while asserting ownership over suit property reference to the documents sought to be produced had not been appearing in the plaint. Same gets incorporation through amendments. It would not appear that with the amendments sought the nature of dispute gets altered. It may not be out of place to refer to that with the incorporation of amendments the plaintiff has not sought any alteration in the reliefs claimed in the suit. Further, it may have to be referred to that the plaintiff appears to be quite prompt in seeking amendment, as suit has been instituted in March, 2017 and amendments has also been sought immediately after written statement had been lodged in June, 2017. Position appears to be that applications seeking amendments are to be considered liberally.

12. In any case, it is always open to defendants to take up appropriate plea and contentions with reference to amendments and documents sought to be produced and amend their pleadings accordingly. As apprehended by learned counsel it would not take away right of resistance of the defendants on the same.

13. It does not appear to be a case wherein any analogy on facts can be drawn from the decision relied on by learned counsel on behalf of petitioners.

14. Having regard to aforesaid, it does not appear that any interception is required to be caused to order impugned. Writ petition is thus not entertained and is rejected, clarifying further that observations in this order shall prejudice neither the parties nor shall in any case affect decisions on merits elsewhere and have efficacy limited to passing of this order.

SUNIL P. DESHMUKH,
JUDGE

pnd/-