

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.934 OF 2018

Manku Ganu Mali, since deceased,
through his LRs Krushnat Manku Mali
and others

... Petitioners

v/s

Bhagwan Sambhaji Gurav, since deceased
through his LRs Anusuya Sambhaji Gurav,
since deceased, Smt Sushila Bhagwan
Gurav and others

... Respondents

Mr N.Y. Chavan for Petitioners.

Mr P.P. Kakade for Respondents.

CORAM : B.P. COLABAWALLA J.

DATE : 24th NOVEMBER, 2018.

P.C. :-

1. Rule. Respondents waive service. By consent of parties, rule is made returnable forthwith.

2. The Petitioners challenge the legality, validity and propriety of the impugned order dated 27th October 2017 passed below Exh.135 in Regular civil Suit No.276 of 1985 by the learned Civil Judge, S.D., Islampur, District Sangli. The Petitioners herein are heirs and legal representatives of the sole Plaintiff before the Trial Court (Manku Ganu Mali).

3. This deceased Plaintiff had filed the Suit in the year 1985 for a declaration and injunction in respect of the suit property bearing City Survey No.978, situated at Peth, Taluka Walwa, District Sangli. This Suit was initially dismissed on 31st March 1995. Being aggrieved by this dismissal, the deceased Plaintiffs preferred Regular Civil Appeal No.383 of 1999. This Appeal was allowed by the Additional District Judge, Islampur, Sangli on 21st December 2004 and remanded the matter back to the Trial Court for fresh hearing. Liberty was also granted to the parties before the Trial Court to amend their pleadings and lead further oral evidence if they so desired.

4. It appears that shortly thereafter, on 17th May 2005, the sole Plaintiffs before the Trial Court expired. Even prior thereto, due to his ill-health he was unable to appear before the Trial Court after the remand. Since nobody appeared on behalf of the Plaintiff, on 30th June 2007, this Suit came to be dismissed for default.

5. The heirs of the Plaintiff (the Petitioners herein) were completely unaware of the litigation that was initiated by the deceased Plaintiff viz. Regular Civil Suit No.276 of 1985. They got knowledge of this proceeding only in the year 2011 when they filed

Civil Miscellaneous Application No.29 of 2011 for condonation of delay and restoration of the Suit. Strangely, though the delay was condoned, the restoration application was dismissed in the year 2015. Accordingly, the Petitioners on 18th September 2015, preferred Miscellaneous Civil Appeal No.57 of 2015 before the District Court, Islampur for challenging the rejection of their restoration application. This Appeal came to be allowed by order dated 17th September 2016 and the Suit was restored to the file of the Trial Court. Since the Petitioners were the legal heirs of the deceased Plaintiff, the Appeal Court also granted liberty to the present Petitioners to apply before the Trial Court for impleading themselves as legal heirs and representatives of the deceased Plaintiff. Accordingly, an application was made by the Petitioners herein for bringing themselves on record in place of the deceased Plaintiff and which application was allowed on 18th July 2017.

6. Thereafter, on 13th September 2017, the Petitioners filed an application for amendment of the plaint being Exh.135. This application was filed pursuant to the liberty granted by the Appeal Court in its judgment and order dated 21st December 2004. This application for amendment of the plaint (Exh.135) was dismissed on 27th October 2017 on the sole ground that the application was not filed within three years as per Article 137 of the Limitation Act

1963. It is being aggrieved by this order dated 27th October 2017 that the present Writ Petition has been filed.

7. On hearing the parties, the learned counsel appearing on behalf of the Respondents fairly stated before me that he was unable to sustain the impugned order. It is not in dispute that the Petitioners were brought on record of the Trial Court only after 18th July 2017. Thereafter, they immediately filed an application for amendment (Exh.135). It is nobody's case that this amendment either alters the nature of the Suit or was preferred after the trial had commenced as contemplated under the proviso to Order 6 Rule 17 of the C.P.C. As mentioned earlier, the Appeal Court, by order dated 21st December 2004, granted liberty to the parties to the Suit to amend the pleadings. Since the deceased Plaintiff was unwell and died shortly after the date of this order, no amendment application could be filed on behalf of the Plaintiff. The amendment application (Exh.135) came to be filed only after the present Petitioners (the heirs of the deceased Plaintiff) were brought on record. This being the case, I find that the Trial Court completely misdirected itself when it came to the conclusion that the amendment could not be allowed as it was not filed within three years as contemplated under Article 137 of the Limitation Act 1963.

8. In these circumstances, the impugned order dated 27th October 2017 is set aside and the Petitioners / Plaintiffs' amendment application (Exh.135) is allowed. The Petitioners / Plaintiffs shall carry out this amendment in the Trial Court proceedings within a period of two weeks from today and thereafter serve the amended plaint on the Defendants through their Advocates within a period of two weeks thereafter. Considering that this Suit is filed in the year 1985, the Trial Court is requested to hear and dispose of this Suit as expeditiously as possible and in any event within a period of one year from today. It is made clear that neither the Plaintiffs nor the Defendants shall ask for unnecessary adjournments before the Trial Court.

9. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

10. All parties concerned, including the Trial Court are directed to act on an authenticated copy of this order.

(B.P. COLABAWALLA J.)