

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

WRIT PETITION NO. 4200 OF 2019

**BHASKARRAO VENKATRAO TARODEKAR AND OTHERS
VERSUS
KONDABAI NARAYANRAO PAWADE AND OTHERS**

...
Advocate for the Petitioners : Shri A. D. Hande
AGP for Respondent Nos. 3 to 7 : Shri N. T. Bhagat
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 17th JUNE, 2019.

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PER COURT :

1. The petitioners/original defendants are aggrieved by the order dated 21/01/2019 passed by the Trial Court, by which, application Exhibit 32 filed by the original plaintiff seeking addition of a prayer and correction of a typographical mistake, has been allowed.

2. The learned Advocate for the petitioners strenuously contends that in the Special Civil Suit No. 27/2018 filed by the plaintiff, a prayer for a declaration that the registered sale-deed No. 734/2018 dated 02/02/2018 executed by defendant No.1 in favour of defendant Nos. 2 to 11 (the petitioners

herein) in respect of land Survey No. 107/C, be declared as illegal, null and void. Further declaration that the sale-deed is not binding on the plaintiff and perpetual injunction against the said defendants, was also sought.

3. It is pointed out that the sale-deed contains the clause of handing over of possession. This was within the knowledge of the plaintiff. No circumstances are indicated to suggest that the plaintiff did not have the knowledge of the said clause. As such, the plaintiff could have put forth a prayer as against the said clause while drafting the plaint. It is further submitted that the nature of the cause of action would be altered and the plaintiff can prefer a separate suit for the said purpose.

4. It is seen from the record that the Special Civil Suit has been lodged in 2018 and the application seeking amendment has been filed on 27/07/2018 which is within five months from the date of the filing of the suit. The written statement was filed by the defendants on 29/09/2018 which is after the filing of the application for amendment Exhibit 32. It is only on account of fortuitous circumstances that the impugned

order on Exhibit 32 was passed on 21/01/2019 which is after about six months from the date of filing of Exhibit 32. As such, it cannot be said that the plaintiff is causing a delay in the suit.

5. The pleadings of the parties would indicate that the plaintiff has prayed for a declaration that the sale-deed is illegal and not binding upon him. Perpetual injunction is also sought against these petitioners. It appears that a specific prayer for seeking recovery of the possession of the property at issue was not set out. It also appears that the plaintiff had not put forth a pleading as regards that the plaintiff is the only L.R. of defendant No.1 and has become the exclusive owner and possessor of the suit land.

6. It is settled law in view of the judgments delivered by the Honourable Apex Court in the matter of *M/s. Revajeetu Builders vs. Narayanswamy & Sons & Others*, AIR 2009 SC (Supp) 2897, that unless a completely new case is introduced and a prayer is put forth which is otherwise not maintainable or barred by limitation if a separate suit was to be filed, an amendment can be allowed. It is also settled law that a

plaintiff can put forth an amendment if it could avoid multiplicity of litigation and is based on the pleadings in the plaint. The Trial Court has delivered an exhaustive order while dealing with all the contentions of the petitioners

7. When the amendment proposed avoids multiplicity of litigation, does not alter the nature of the suit and does not put forth a new cause of action, I do not find that the impugned order could be termed as being perverse or erroneous.

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

(RAVINDRA V. GHUGE, J.)

shp/-