

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

WRIT PETITION NO.5206 OF 2016

SHAILAJA CHANDRAKANT KALAMKAR AND ANOTHER
VERSUS
RANGNATH GANPAT DANGE DIED THROUGH LRS SUNANDA
RANGNATH DANGE AND OTHERS

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Advocate for the Petitioners : Shri Dhorde Vikram R. a/w Shri Mobin
Shaikh.

Advocate for Respondents 1A, 1C, 2, 3 and 6 : Shri P.P.Dawalkar.

Advocate for Respondents 11A and 11B : Ms.Shubada T. Kunjar h/f
Smt.C.S. Deshmukh.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 11th April, 2019

Per Court:

1 The Petitioners/ original Plaintiffs are aggrieved by the order dated 26.04.2013 passed by the Trial Court vide which, the application Exhibit 111 filed by them seeking an amendment, under Order VI Rule 17 of the Code of Civil Procedure, to their plaint in RCS No.81/2012 (old Special Civil Suit No.63/2002), has been rejected.

2 The learned Advocate for the Petitioners submits that these Petitioners are married daughters. They are the only two daughters of the deceased Rangnath and Sindhu and are grand-daughters of the original owner and ancestor Ganpatrao-Kamlabai Dange (both deceased). The

Defendants are the children of the deceased Chandrakant, who is one of the three sons and two daughters of Mahipat. Mahipat was the real brother of Rangnath and the son of Ganpatrao-Kamlabai. The suit is for partition and separate possession of the ancestral properties.

3 It is further strenuously submitted on behalf of the Petitioners that as they are married daughters, they were unaware that the properties at Gat Nos.17/B-1 and 17/B-2 were sold by the original owners/ third parties. Ganpatrao was the protected tenant and Rangnath had inherited such tenancy, due to which, the original owner could not have sold the said properties. Without inclusion of these properties, which are part of the tenancy lands, the suit of the Petitioners would suffer an irreparable damage. In this backdrop, application Exhibit 111 was preferred for introducing paragraphs 6-A, 8-A and for declaration in prayer clause K-1 that the sale deed dated 17.05.1996 be declared as illegal and not binding on the Plaintiffs.

4 Reliance is placed upon the judgments of the Honourable Supreme Court in the matters of *Surender Kumar Sharma vs. Makhan Singh*, 2009 ALL SCR 2452 and *Abdul Rehman vs. Mohd. Ruldu and others*, 2012 ALL SCR 2922 and the orders passed by this Court in the matters of *Smt.Shantabai Natthuji Thakre vs. Vasant Shyamraoji Wankhede*, 2014 (6) ALL MR 852 and *Kamlesh Jagannath Suryavanshi vs. Kalyan Shirshir Kumar Dutta*, 2013 (6) ALL MR 537.

5 The learned Advocate appearing for the contesting Respondent Nos.11A and 11B has strenuously opposed this petition. She draws my attention to the proviso below Rule 17 under Order XVI of the Code of Civil Procedure and contends that this proviso was introduced by the amendment in 2002 with an intent and object of ensuring that the delayed or belated amendments should not be permitted in the suit so that no litigant would delay the proceeding. The said proviso casts the burden upon a litigant seeking an amendment to disclose as to what were the circumstances, which prevented him, despite his best efforts, in moving the application for amendment.

6 She then submits that even if the amendment is to be accepted, the same would be barred by the law of limitation. There are no pleadings in Exhibit 111 as to when and how did these Petitioners gather the knowledge of the sale deed and what were the circumstances that prevented them from challenging the sale deed when the suit was originally lodged in 2002. In the absence of such pleadings and without disclosing the source of knowledge and the time when the sale deed came to the knowledge of the Plaintiffs, an application cannot be entertained. She adds that the pendency of the suit for the last about 17 years as on date and 11 years when the application Exhibit 111 was filed, is the decisive factor.

7 Insofar as the law laid down by the Honourable Supreme

Court in the matters of *Surender Kumar Sharma (supra)* and *Abdul Rehman (supra)* is concerned, there can be no debate that the amendments to the plaint have to be considered liberally in order to ensure that the litigant is able to put forth his best case. The amendment to the written statement is to be considered even more liberally in comparison to the amendment to the plaint. It is equally settled that the amendment cannot be denied merely because the trial has commenced in the matter.

8 The Honourable Supreme Court has laid down certain guiding principles in relation to amendments, in the matter of **Revajeetu Builders and Developers vs. Narayanaswamy & Sons and Others, (2009) 10 SCC 84**. It is specifically concluded in paragraph 63 that though the amendment is to be liberally construed, the Court cannot grant an amendment permitting a litigant to introduce a cause of action, which would either change the character of the suit or which cause of action is otherwise barred by limitation if a separate suit was to be filed. Such a suit would be rendered untenable on account of the bar of limitation.

9 The observations of the Honourable Supreme Court appearing in paragraph 63 of *Revajeetu Builders (supra)* read as under :-

“63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) whether the application for amendment is bona fide or mala fide;*
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

10 It is obvious that these Petitioners desire a declaration that the sale deed dated 17.05.1996 be declared as illegal and not binding on them. Such declaration would fall under part-III "Suit relating to declarations" under the Limitation Act, 1963. Such cause of action would be squarely covered by Article 58 of the Limitation Act, 1963, which prescribes the limitation of three years and such limitation beings when the right to sue first accrues.

11 The learned advocate for the Petitioners has strenuously tried to read the said clause as being co-related to the date on which the

plaintiffs got the knowledge of the sale deed and hence, that date would be the date when the right to sue has first accrued.

12 The above stated submissions of the Petitioners/ Plaintiffs cannot be accepted for the simple reason that Exhibit 111 filed by the Plaintiffs does not speak about when and how these Plaintiffs gathered the knowledge of the sale deed. I find that the statement that they gathered such knowledge recently, is too vague and ambiguous to be accepted since it is a matter of maintainability of the said cause of action in the light of the Limitation Act, 1963. When such cause would be barred by the law of limitation after three years, a vague or ambiguous contention cannot be casually accepted since this would amount to an assumption about the time when the period of limitation would begin.

13 Insofar as the apprehension of the Plaintiffs that their suit would be dismissed for failure to add two properties is concerned, the Trial Court would surely not ignore the fact that though these two properties were not included, an attempt to include them has been refused by the Trial Court as well as by this Court for the reasons recorded above. This would, therefore, not be fatal to the case of the Petitioners/ Plaintiffs.

14 In view of the above, this Writ Petition, being devoid of merit, is, therefore, dismissed.