

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7484 OF 2018

SAVITA RAHUL PATIL @ SAVITA ASHOK PAWAR & ANR
VERSUS
BHARAT DEORAO PAWAR & ANR

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Advocate for Petitioners : Shri Shaikh Mobin H.
Advocate for Respondent 1 : Shri Patni Pramod F.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 19, 2019

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PER COURT :-

1. The petitioners are original plaintiffs, who are aggrieved by the order dated 10.4.2018, passed by the trial Court in RCS No.57 of 2016, vide which, application Exhibit 49, filed by the plaintiff seeking amendment to the plaint, has been rejected.
2. Considering the submissions of the petitioners on 11.7.2018, this Court (Coram : Sunil P. Deshmukh, J.) has recorded such submissions in the order, which reads as under:-

"1. *Issue notice to respondents returnable on 8-08-2018.*

2. *Learned counsel submits that while the request under amendment is only for making reliefs explicit which had already been implicit and corresponding averments had been existing in the plaint, only formally reliefs were being claimed under the amendments. He further refers to that the petitioners are from*

remote rural area and were largely guided by the counsel received from time to time. He, therefore, submits that stringency of due diligence may not have strict application to petitioners' case. He submits, suit is posted on 13-07-2018.

3. *In the circumstances, there shall be ad-interim relief in terms of prayer clause (C).*

4. *In addition to service through court process, applicant/s shall serve respondent/s by any legally acceptable private mode of service and file affidavit along with tangible proof to that effect by returnable date. In case of failure to serve respondents privately and file affidavit as directed before returnable date, ad-interim relief as has been granted would automatically cease to operate."*

3. Learned Advocate for respondent No.1 submits that though the petitioner has made a passing reference to a contention of the defendant that the arguments of the parties in the suit are concluded, the petitioners have not fairly stated before this Court that the impugned order was passed when the suit was reserved for judgment.

4. Notwithstanding the above, the plaintiffs desire that the trial Court should grant a declaration that a sale deed bearing registration No.3490 of 1999, dated 28.6.1999, executed by defendant No.2 Shantabai in favour of defendant No.1 Bharat, is not binding upon

the plaintiffs.

5. Learned counsel for the petitioners / plaintiffs submits that the plaintiffs have referred to the sale deed of 1999 in their pleadings in paragraph No.6 and it is prayed in paragraph No.6 that the said sale deed be declared as null and void, illegal and not binding upon the plaintiffs. It is submitted that evidence is also led touching the said issue. However, after the oral final submissions were concluded before the trial Court, the plaintiffs realized that a formal prayer was not made in the prayer clause, though the relief of a declaration that the sale deed is not binding, is set out in the claim clause of the suit and is adequately dealt with in paragraph Nos.6 and 9 in the plaint. Reliance is placed upon the judgment of the Honourable Apex Court in the matter of Nanduri Yogananda Lakshminarayasimhachari and others Vs. Sri Agastheswaraswamivaru [AIR 1960 SC 622] and the judgment delivered by this Court in the matter of Shantabai Natthuji Thakre Vs. Vasant Shyamraoji Wankhede and others [2014 (6) All M.R. 852].

6. Learned Advocate for the respondents have opposed this petition by contending that the petitioners have secured an ex-parte ad-interim order by suppressing the fact from this Court that RCS No.57 of 2015 along with RCS No.215 of 2012, filed by Bharat, have

been reserved for judgment. Both the suits have been clubbed. The impugned order clearly indicates that the suits were reserved for judgment.

7. Learned counsel appearing for Bharat further submits that Article 59 of the Limitation Act 1953 is applicable to the prayer for cancellation of an instrument, as the limitation is only three years from the time the plaintiff gets the knowledge of such an instrument. The plaintiffs have led evidence with regard to the pleadings. A specific issue with regard to limitation has been framed at Sr. No.6, by the trial Court.

8. Learned counsel for the plaintiffs submits that issue No.5 deals with whether the prayer of the plaintiff could be considered in the absence of a specific prayer as regards the declaration against the sale deed of 1999. He submits that the plaintiffs would not lead any further evidence if the said deficiency is allowed to be cured before it became too late.

9. Considering the above, though it is crystallized law that permitting an amendment after the suit is reserved for judgment is an anathema, except in rarest of rare cases, I find that there are pleadings on record and the claim title of the plaint also indicates the

reliefs sought by these plaintiffs. An issue has also been framed to that extent. Naturally, the trial Court would now have to consider the prayers of the plaintiffs in the light of their pleadings and especially under issue No.6, which is the bone of contention in this petition. Learned counsel Shri Patni submits that the suit be directed to be disposed off by the end of April, 2019.

10. In view of the above, this petition is partly allowed. The impugned order dated 10.4.2018 is quashed and set aside and application Exhibit 49 is partly allowed with the following directions:-

(A) As the learned counsel for the respondents submits that a portion of the costs be donated for the treatment of poor patients, the petitioners shall deposit an amount of Rs.7,500/- before the trial Court on/or before 5.4.2019 and shall deposit an amount of Rs.2,500/- on/or before the same date with the Government Medical College and Hospital, Aurangabad, through Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft (Demand Draft be drawn in the name of “Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad”).

(B) The prayer set out in Exhibit 49 shall be incorporated in the plaint on/or before 29.3.2019 in red ink and a freshly typed amended plaint would not be

required to be filed.

(C) Since the oral arguments / submissions of the litigating sides have concluded, they are permitted to address the Court only on the point of limitation on the basis of the evidence adduced, on/or before 5.4.2019. The trial Court would, thereafter, close the suit for judgment and would endeavour to deliver its judgment on/or before 30.4.2019.

(D) It is made clear that neither of the parties would be permitted to adduce fresh evidence, nor would they be permitted to raise any new grievance.

11. This order has been passed in the peculiar facts of this case and shall not be cited as a precedent.

(RAVINDRA V. GHUGE, J.)

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