

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8053 OF 2019

Sahebrao Ratan Patil

Petitioner

Versus

Vikram Ratan Patil & another

Respondents

Mr.C.V.Dharurkar, Advocate for the petitioner.

Mr.G.S.Rane, Advocate for the Respondents No.1 & 2.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 15/07/2019

PER COURT :

1 The petitioner - original defendant is aggrieved by the order dated 11.04.2019, passed by the trial Court, vide which the application Exhibit-33 filed by the plaintiffs seeking amendment to the plaint in RCS No.71 of 2012, has been allowed.

2 The learned Advocate for the petitioner has strenuously criticised the impugned order. He draws my attention to the grounds formulated in the memo of the petition.

3 He contends that the plaintiffs have also moved an application seeking temporary injunction at Exhibit-6. The suit is

purely for seeking perpetual injunction against the defendants who are close relatives of the plaintiffs. After Exhibit-6 application was rejected by a reasoned order, holding that all the litigating sides are jointly in possession of the suit properties, that the plaintiffs have attempted to take a stand that some of the properties have been encroached upon by the defendants. The allegation that the properties are encroached upon is levelled against only defendant no.1-Sahebrao. By virtue of the amendment, a relief of recovery of possession is introduced and that would change the entire nature of the cause of action. He further submits that if the plaintiffs desire to raise a grievance about such a purported cause of action, they would be at liberty to institute a separate suit.

4 Reliance is placed upon the judgments delivered by the Hon'ble Apex Court in the matter of **Usha Balasaheb Swami & others Vs. Kiran Appaso Swami & others**, AIR 2007 SC 1663; and in the matter of **Revajeetu Builders and Developers Vs. Narayanswamy and Sons & others** (2009) 8 MhLJ 907 (SC).

5 The learned Advocate for the plaintiff submits that they have voiced all their apprehensions in the plaint. Since they were

under a *bona fide* belief that their shares are yet to be encroached upon, that they have only prayed for seeking injunction against the defendants. After the application Exhibit-6 was rejected, the plaintiffs realised that the defendants have taken possession of some of the shares of the plaintiffs and on the basis of this impression, the application for seeking amendment has been filed.

6 It is settled law that when it comes to seeking an amendment, the trial Court is not required to go into the merits of the amendment. It is equally settled that an amendment can be permitted so as to avoid multiplicity of litigation. The Hon'ble Apex Court has culled out certain principles in the judgment delivered in the matter of **Revajeetu Builders and Developers** (*supra*). Primarily two considerations have to be taken into account. Firstly, that the amendment should not lead to changing the entire cause of action and secondly, the amendment should not be permitted if the cause of action sought to be introduced, is otherwise barred by the law of limitation and a separate suit on the said cause of action would not be maintainable upon being hit by limitation.

7 In the instant case, the plaintiffs submit that after the

application Exhibit-6 for temporary injunction was rejected, that they realised that some of the defendants have occupied their share of the properties which can be termed as an encroachment. The plaintiffs have averred that all the properties having devolved upon them after the demise of their widowed sister and thereafter the plaintiffs have carried out a partition amongst the brothers. The case of the defendant is that there was no such partition. The sisters, who were left out by the plaintiffs/brothers, have also been subsequently arrayed as defendants under the orders of the trial Court.

8 In my view, the impugned order permitting amendment cannot be faulted as it takes care of avoiding multiplicity of litigation. Since perpetual injunction has been sought by the plaintiffs, if they claim to have lost possession during the pendency of the suit, the relief of recovery of possession and injunction accordingly could be put forth rather than filing a fresh suit. However, the trial Court would have to assess as to whether the cause of action now put forth by the plaintiffs through the amendment, is barred by limitation.

9 Hence, though the impugned order could be sustainable, the trial Court could frame an additional issue as regards, whether the subsequent cause of action is barred by law of limitation and

would consider the same while deciding other issues.

10 In view of the above, this petition is partly allowed only to the extent of directing the trial Court to frame an issue with regard to limitation pertaining to the cause of action introduced through the amendment. Needless to state, all the litigating parties would be at liberty to lead evidence on this issue.

11 The learned advocates for the respective sides submit that since close relatives are involved and the suit is 7 years old, it may be expedited. Considering the same, the trial Court would decide RCS No.71 of 2012, as expeditiously as possible and preferably on or before 31st day of August, 2020.

(RAVINDRA V. GHUGE, J.)