

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7245 OF 2018

Bebabai w/o Dashrath Hatkar,
Age-68 years, Occu-Agriculturist,
R/o Jamde, Tq. Parola,
Dist. Jalgaon

– PETITIONER

VERSUS

1. Sakubai Trembak Waghmode,
Age-65 years, Occu-Household
and Agriculturist,
R/o Krushnapuri, Barkhedinaka,
Pachora, Dist. Jalgaon.
2. Padmabai w/o Daga Khatal,
Age-62 years, Occu-Agriculturist,
R/o Ambode,
Tq. And Dist. Dhule
3. Mirabai w/o Dhana Devkate (Hatkar),
Age-60 years, Occu-Hoiusehold,
R/o Jambora, Tq. Dharangaon,
Dist. Jalgaon
4. Muktabai w/o Bhika Gote,
Age-59 years, Occu-Household,
R/o Tambapura, Jalgaon,
Dist.Jalgaon
5. Sarubai w/o Govinda Devkate,
Age-58 years, Occu-Household,
R/o Tambapura, Jalgaon,
Dist. Jalgaon
6. Khatabai w/o Ramesh Sarad,
Age-57 years, Occu-Household,
R/o Krushnapuri, Varkhadinaka,
Pachora, Dist. Jalgaon,

7. Vimalbai w/o Bhurmal Henmane,
Age-55 years, Occu-Household,
R/o Kholsar, Tq.Parola,
Dist. Jalgaon,
8. Dayaram s/o Mukta Patil,
Age-Major, Occu-Agriculturist,
R/o Udane, Tq. And Dist.Jalgaon
9. Dattatraya s/o Motilal Chaudhari,
Age-Major, Occu-Agriculturist,
R/o Mukti, Tq. And Dist. Dhule
10. District Collector, Jalgaon,
District Collector Office,
Akashwani Chowk, Jalgaon

11. State of Maharashtra

– RESPONDENTS

Mr.V.B.Anjanwatikar, learned Advocate for the petitioner.
Mr.N.T.Bhagat, learned AGP for respondent Nos. 10 and 11.
Mr.M.H.Patil, learned Advocate for respondent Nos. 1 to 7.
Mr.G.S.Rane, Advocate for respondent No.9.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 13/02/2019

ORAL JUDGMENT :

1. The petitioner / original defendant is aggrieved by the impugned order dated 27/04/2018 by which the Trial Court has rejected application Exh.101 filed by this petitioner in Spl.Civil Suit No.136/2012, has been rejected.

2. Leave to delete respondent No.8. Deletion be granted forthwith.

3. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

4. This case pertains to Spl.C.S. No.136/2012 wherein the original pleading of the petitioner in her W.S. is that there was a "Sauda Pavati" (Agreement to Sell). She desires to add a paragraph below paragraph No.16 in her W.S. to make out a case that the "Sauda Pavati" was actually a "nominal Sauda Pavati". Therefore, the issue is whether such an amendment could be permitted to enable this petitioner to convert her stand from admitting a "Sauda Pavati" to making the Sauda Pavati appear as a nominal Sauda Pavati.

5. A co-defendant Dattatraya in the suit at issue, who is respondent No.9, is aggrieved by the request of the petitioner for the reason that he has instituted a Spl.Civil Suit No.9/2014 seeking specific performance in pursuance to the Sauda Pavati as Rs. 15,25,000/- have been already paid to the present petitioner Bebabai. He further adds that on the one hand, a Sauda Pavati can be an executable document and on the other hand, a nominal Sauda

Pavati is not an executable document. He also submits that in the Sauda Pavati, there is no word "nominal" before the words "Sauda Pavati".

6. The petitioner Bebabai has participated in RCS No.136/2012 which is instituted by her step daughters seeking partition and separate possession. Bebabai claims to have married deceased Dashrath after his first wife passed away. Her portion of the suit land was given to her by Dashrath towards maintenance. On account of the constant pressure of her step children and other relatives, she got fed up and on the advice of well wishers, she has entered into a Sauda Pavati with respondent No.9 Dattatraya. In her written statement filed in the first suit, she has defined the document as a "Sauda Pavati" and now contends that it should have been mentioned as a nominal "Sauda Pavati". The entire recording of oral evidence of the plaintiff and the defendants is said to be concluded in the first suit and the stages for advancing final arguments, today. Bebabai filed application Exh.101 before the recording of oral evidence could be concluded and by that time, it is now decided vide the impugned order about 10 months ago, the suit is at the final stage.

7. I find from the record that Bebabai has filed a written statement in the second suit filed by Dattatraya specifically taking a stand that the Sauda Pavati is a nominal Sauda Pavati. The apprehension of Bebabai is that since in the first suit, she failed to write the word “nominal”, Dattatraya will take undue advantage of this written statement and her cross examination, for the sake of the second suit though she has averred "nominal Sauda Pavati" in the said suit in her written statement.

8. There can be no dispute that the Hon'ble Apex Court has held in several matters that an amendment could be allowed at any time subject to certain conditions, which one would find in the judgments delivered in Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others [2009 (10) SCC 84] and Chakreshwari Construction Pvt.Ltd., Vs. Manohar Lal [(2017) 5 SCC 212]. As such, delay cannot be the sole ground for refusing an amendment. However, in the matters of Abdul Rehman and another Vs. Mohd.Ruldu and others [2012 AIR SCW 5419] and Ram Niranjani Kajaria Vs. Sheo Prakash Kajaria and others [2015 AIR SCW 6475], the Hon'ble Apex Court has held that if some admissions or statements are extracted in cross examination, an amendment cannot be permitted to water down such statements which have been

extracted and recorded in the cross examination.

9. In fact, it would have been convenient to find out whether Bebabai has actually used the words “nominal Sauda Pavati” in the said document. However, learned Advocate for Bebabai does not have the assistance of the “Sauda Pavati” in this matter.

10. Considering the peculiar facts as above and in view of the law laid down by the Hon'ble Apex Court in Abdul Rehman (supra) and Ram Niranjana (supra), I do not find that the impugned order of the Trial Court could be branded as being perverse or erroneous, merely because a different view is possible. This petition, being devoid of merit, is therefore, dismissed. Rule is discharged.

11. However, it be noted that the Trial Court dealing with SCS No.9/2014, would consider the averments set out by Bebabai in her written statement and the evidence that she has recorded or may record in future as well as by perusing the "Sauda Pavati", so as to decide the said suit on its own merits.

(Ravindra V.Ghuge, J.)