

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8536 OF 2019

RAJENDRA KONDAN JADHAV AND ANOTHER
VERSUS
MALOBA JANARDHAN JADHAV AND OTHERS

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Advocate for Petitioners : Shri Choudhary S.S.
and Shri Jagtap Amol T.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 16, 2019

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PER COURT :-

1. The petitioners are the original defendants, who are aggrieved by the impugned order dated 29.4.2019, by which, the trial Court has allowed application Exhibit 49, filed by the plaintiffs seeking amendment to the plaint under Order VI Rule 17 of the CPC in RCS No. 69 of 2013.

2. The learned Advocate for the petitioners has strenuously criticized the impugned order. He points out that the suit was lodged on 6.3.2013 seeking perpetual injunction against the defendants on the ground that they should not disturb the peaceful possession of the plaintiffs and should not grab their property.

3 A Written Statement was filed by the defendants on

25.3.2014 contending that the suit be dismissed. A counter claim was also filed putting forth a prayer that the original plaintiffs should not disturb their peaceful possession and enjoyment over the suit land.

4. It is then submitted that application Exhibit 5 seeking temporary injunction by the plaintiffs was rejected by the order dated 25.3.2015. Issues were cast on 27.7.2016. Application Exhibit 49, seeking amendment was filed by the original plaintiffs on 13.1.2017.

5. It is then pointed out that by an earlier order passed by the trial Court on 5.7.2018, Exhibit 49 was allowed. These petitioners preferred Writ Petition No.8103 of 2018 before this Court. By order dated 20.3.2019, this Court noted that the oral submissions of the litigating sides on application Exhibit 49 were concluded on 10.4.2017 and the order was passed on 5.7.2018, after 15 months. Hence, this Court interfered with the said order and directed the learned Judicial Officer to again hear all the litigating sides on Exhibit 49 and pass a fresh order.

6. The learned counsel for the petitioners strenuously submits that Exhibit 49 deserves to be rejected for two reasons. Firstly, that

Exhibit 49 has been filed belatedly and secondly, no explanation as regards due diligence has been expressed in the application. Reliance is placed upon the judgment of the Honourable Apex Court in the matter of Arundhati Mishra Vs. Sriram Charitra Pande [1993 CJ (SC) 44] and the judgment of this Court in the matter of Purushottam @ Nana U. Sanyashi Vs. M.D.Agrawal [2004 CJ (Bom) 1039]. It is also contended that a new case is made out by the plaintiffs and reliance is placed upon the judgment of this Court in the matter of Bhaurao Laxman Honde Vs. Namdeo Laxman Honde [2002 (5) Mh. L.J. 343]. It is then submitted that an opposite case is made out and in support of the said contention reliance is placed upon the judgment of this Court in the matter of Janu Laxman Kumbhar Vs. Pandurang Laxman Kumbhar [2001 CJ (Bom) 381].

7. I find from the record that the plaintiffs have specifically come with the case that the defendants were disturbing their possession of the suit property. There was every possibility of an encroachment on their share of the land, which came to them after the consolidation scheme was implemented. In order to prevent encroachment and to enable the plaintiffs to peacefully enjoy the portion of the land in their possession, perpetual injunction was sought. After the pleadings were completed, the trial Court delivered an inter-locutory order on 25.3.2015, concluding that a

particular portion of the land came to the defendants after the consolidation scheme. As the defendants produced certain photographs from Magic Digital Studio and established that they had constructed a house, a cattle shade and a samadhi in some portion of the land, that the plaintiffs realized that they would have to amend the plaint so as to seek recovery of that portion of the land, which according to them, has been encroached upon by the defendants.

8. The issues were cast on 27.7.2016 and Exhibit 49 was filed on 13.1.2017. Since then, the said application is pending for the reasons recorded in the foregoing paragraphs.

9. The Honourable Apex Court has settled the law in the matter of Revajeetu Builders and Developers Vs. Narayanaswamy and sons [(2009) 10 SCC 84 = 2009 (8) MLJ 907- (SC)], concluding that an amendment to a plaint can be permitted in order to avoid multiplicity of litigation. Subsequent events, foundation to which is laid out in the plaint, can be a ground for amendment. It is never too late to carry out an amendment, so as to avoid injustice and to avoid multiplicity of litigation. It is also held that if a completely different cause of action unconnected with the cause set out in the suit is put forth or if such a cause of action is sought to be brought

out for adjudication, which is time barred and a separate suit for raising the cause of action would be barred by limitation, such an amendment cannot be permitted.

10. In Arundhati Mishra (supra), the issue was as to when would the limitation start, with reference to the assertion of adverse possession. In Bhaurao (supra), this Court dealt with an issue, whereby, a defendant was withdrawing vital admissions set out in the written statement and was setting up an altogether new case. This Court concluded that such an amendment cannot be allowed. In Purushottam (supra), this Court denied leave to amend since the new facts pleaded in the proposed amendment were completely distinct and different than the cause of action put forth in the plaint. In Janu Laxman (supra), the defendant sought to withdraw certain admissions and the stand earlier taken, proposing a diagonally opposite stand for asserting a title.

11. In the present case, the plaintiffs have approached the trial Court under the fear of encroachment and disturbance by the defendants. The apprehension of encroachment has been voiced and therefore, perpetual injunction is sought. The defendants filed a counter claim, claiming possession over that portion of land, which according to the original plaintiffs had come to their share in

the consolidation scheme. After the plaintiffs realized that the trial Court has concluded that the defendants have carried out certain constructions and erected a cattle shade as well as a samadhi on such portion of land, which according to the plaintiffs was in their possession, that the plaintiffs sought amendment in 2017.

12. The proposed amendment is as regards the removal of encroachment committed by the defendants and for recovery of possession. In my view, the amendment needs to be allowed in order to avoid a new suit for the said purpose, when the reliefs sought are based on the apprehensions voiced which came true by the subsequent events.

13. It is always open to the defendants to request the trial Court to frame an issue of limitation, if they feel, that the prayer added through the amendment is struck by the law of limitation. The trial Court is bound to consider the issue of limitation since the reliefs sought in the amendment are normally related back to the date of the filing of the application, unless the trial Court specifically mentions a date from which the proposed prayers would be considered.

14. Considering the above, I do not find that the impugned order

could be branded as perverse or erroneous. This petition, being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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