

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9790 OF 2019

Rasool Khan s/o Karim Khan

Petitioner

Versus

Nagar Parishad, Ambajogai & others

Respondents

Mrs.A.N.Ansari, advocate for the petitioner.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 07th August, 2019

PER COURT:

1 The petitioner, who is the appellant before the first appellate Court in Regular Civil Appeal No.57/2009, is aggrieved by the order dated 24.06.2019, passed by the appellate Court, rejecting the application Exhibit-31 filed by the appellant seeking amendment in the written statement filed in the suit.

2 I have heard the learned advocate for the petitioner and have perused the petition paper book with her assistance.

3 The pending appeal has arisen out of the judgment and decree dated 30.04.2009 delivered by the trial Court in RCS No.238 of 1975. The said suit was filed by the Municipal Council,

Ambajogai. The petitioner was the defendant. The suit was filed for seeking possession of the suit property, on 01.07.1975. The written statement filed by this petitioner at Exhibit-19 is dated 10.06.1977. In the written statement, the petitioner initially admitted that she, along with the other defendants, was a tenant and was ready to pay additional rent. The said written statement was subsequently amended by an order of the trial Court dated 26.02.1993.

4 In the amended written statement, it is contended that the suit property is taken on rent from Mehboob Ali Khan Nagad about 52 to 55 years ago. The sale deed dated 25.03.1988 is said to have been entered into between the petitioner and Mehboob Ali Khan. This sale deed of 25.03.1988 was before the petitioner when the written statement was amended by an order dated 26.02.1993. This purchase can be termed as being a purchase *pendente lite*. No reasons have been assigned as to why the petitioner did not introduce in the written statement the alleged fact of having purchased the suit property from Mehboob Ali Khan, while carrying out such amendment. The law is settled that if a litigant gives up a particular ground or a cause at the first available opportunity, the said cause is said to have been given up by such a

litigant.

5 The issue raised by the petitioner is that in another proceeding, the appellate Court has decided Regular Civil Appeal No.54 of 2007 by judgment dated 29.01.2018 and has made it clear that the issue of ownership or acquisition of the suit land would be kept open for adjudication in Regular Civil Appeal No.57 of 2009. It is contended that the petitioner seeks an amendment in the written statement in the pending Regular Civil Appeal No.57 of 2009 in view of this observation.

6 It cannot be ignored that, by the amendment to the written statement introduced in 1993, this petitioner had already taken a stand that he has a title to the property. Naturally, this aspect was to be dealt with by the Court in the 2009 pending appeal. This, therefore, cannot be a ground for amending the written statement after 25 years on the spacious plea that the 2007 appeal has now been decided.

7 In view of the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition, being devoid of merit, is, therefore, dismissed.

8 Needless to state, as the pending appeal is 10 years' old, the appellate Court at Ambajogai shall give a priority to the said proceedings and shall dispose of the pending RCA No.57 of 2009, as expeditiously as possible and in any case, on or before 31st December, 2019.

RAVINDRA V. GHUGE
JUDGE

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