

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10380 OF 2018

Aashish @ Aashutosh s/o Shamkant Shukl,
Age : 40 years, Occu : Service,
R/o : Survey No. 1563,
Galli No.5, Dhule,
Taluka and District Dhule.

**...Petitioner
(Orig. defendant Nos.1B)**

VERSUS

- 1] Dr. Bhushan s/o Ramdas Choudhary,
Age : 41 years, Occu : Medical Practitioner,
R/o : Galli No.4, Ranade Smruti,
District Dhule. **... Respondent
(Orig. Plaintiff)**
- 2] Deelip s/o Raghunath Shukl,
Age : 64 years, Occu : Pensioner,
R/o : Plot No. 31, Bijali Nagar,
Gondur Road, Deopur, Dhule,
Taluka and District Dhule,
- 3] Pradeep s/o Raghunath Shukl,
Age : 62 years, Occu : Service,
R/o : City Survey No. 1563,
Galli No.5, Dhule,
Taluka and District Dhule.
- 4] Anil s/o Raghunath Shukl,
Age : 56 years, Occu : Service,
R/o : Plot No. 110,
Vivekanand Nagar,
Walwadi, Dhule,
Taluka and District Dhule.
- 5] Sunil s/o Raghunath Shukl,
Age : 46 years, Occu : Service,
R/o : Flat No.11, Pravinamahar
Building, Near Saiprasad Hall,

Shivaji Chowk, District Thane.

- 6] Sau. Manisha w/o Anil Kadhale,
Age : 50 years, Occu : Household,
R/o : 104, C.I. Home, Mata Mandir,
T.T. Nagar, Bhopal.
(Madhya Pradesh)

RESPONDENTS

(Orig. defendant Nos. 2 to 6)

- 7] Smt. Shobha w/o Shamkant Shukle Died
Her L.Rs. are the present petitioner
and Respondent No.8.

- 8] Sau. Archana wo Milind Zende,
Age : 32 years, Occu : Household,
R/o : 9, Rajni Pandit Apartment,
Mangalmurti Nagar,
Near R.T.O. Nagar, Bodhale Nagar,
Dwarka, Nashik,
District Nashik 422 011.

- 9] Yogesh s/o Shamkant Shukl,
Age : 36 years, Occu. : Service,
R/o : House No. 4550,
Om Building, Near Mahadev Temple,
Panchavati, Dhule,
Taluka and District Dhule. **..Respondents**
(L.Rs. of defendant No. 1C and 1D)

**(Respondent Nos. 2 to 9 deleted as per the leave granted
by Hon'ble High Court on 17/01/2019)**

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Advocate for the Petitioner : Shri C. R. Deshpande h/f.

Shri C. C. Deshpande

Advocate for the Respondent No.1 : Shri Y. G. Gujarathi

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 17th JANUARY, 2019.

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ORAL JUDGMNT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. Leave to correct the exhibit number in the prayer clause.
3. The learned Advocate for the petitioner submits that the cause of action is limited to the interests of the petitioner and respondent No.1, who is the original plaintiff. Rest of the defendants are formal parties and prays for leave to delete them. Leave is granted and the deletion be carried out forthwith.
4. The petitioner is aggrieved by the order dated 02/07/2018 passed by the Trial Court, by which, application Exhibit 120 filed by the petitioner – original defendant No.1-B, seeking permission to file an additional written statement, has been rejected.
5. I have considered the strenuous submissions of the learned Advocates for the petitioner and respondent No.1.

6. Considering the conspectus of the matter, I find that the sequence of events need to be reproduced for clarity, as under :-

(a) A purshis at Exhibit 52 dated 02/04/2014 was tendered by the original defendants No. 3 Pradeep declaring that his share in the properties has been sold by him to the plaintiff vide sale deeds dated 28/11/2013 and 02/04/2014.

(b) Sale deed dated 28/11/2013 was executed by defendant Nos. 2 and 4 to 6 in favour of the plaintiff and sale-deed dated 02/04/2014 was executed by defendant No. 3 in favour of the plaintiff.

(c) Application Exhibit 111 was filed by the present petitioner and defendant No.1D, on 17/10/2016 seeking leave to amend for challenging the two sale-deeds. Exhibit 111 was, therefore, filed within three years from the date of the execution of both the sale-deeds.

(d) By a lengthy order dated 27/11/2017, the Trial Court rejected Exhibit 111.

(e) The petitioner and defendant No. 1-D approached this Court in Writ Petition No. 217/2018 which was disposed off as withdrawn. This Court granted liberty to the said defendants, by order dated 12/03/2018, to apply to the Trial Court for filing an additional written statement.

(f) Pursuant to the above, application Exhibit 120 was filed by the petitioner alone on 16/04/2018 seeking permission to file an additional written statement.

(g) By the impugned order dated 02/07/2018, the Trial Court has rejected the application.

7. Having considered the sequence of events and the vehement contentions of Shri Gujarathi praying for rejection of the petition with heavy costs, I have considered the record available. It appears from the record that the present petitioner realized that he had to challenge the two sale-deeds in view of the suit being for partition and separate possession. No doubt, he could have moved an application immediately after the purshis Exhibit 52 was filed declaring the execution of the two

sale-deeds by the parties. Nevertheless, the application for amendment was filed and which was rejected by the Trial Court and the Writ Petition was disposed off by this Court.

8. Shri Gujarathi submits that Exhibit 120 is a skeletal application and there are no pleadings as to why the petitioner desires to file an additional written statement. The Trial Court has considered all the contentions of the litigating sides and has noted that Exhibit 20 was filed as the two sale-deeds were executed after the filing of the suit. However, the Trial Court observed that the permission to allow filing of an additional written statement under Order VIII Rule 9 of the Code of Civil Procedure will have to be considered in the light of the facts and circumstances of the case.

9. The issue, therefore, is as to whether in a suit for partition and separate possession, this petition would lose a valuable right to challenge the two sale-deeds that were executed *pendente lite*. No doubt, the suit can be decreed in view of the facts and circumstances existing on the date on

which the suit was lodged. However, in order to avoid further complication/contention that the said two sale-deeds were not challenged, that has prompted the petitioner to formally challenge the said sale-deeds.

10. In my view, when events have occurred after the filing of the suit and if the litigant praying for leave to file an additional written statement, would suffer an irreparable loss, manifest convenience, grave hardships and would be rendered defenceless, an application for permission to file an additional written statement needs to be granted.

11. It also needs to be noted as to whether any issue as regards the law of limitation would apply to the cause of action set out in the additional written statement. The learned Advocate for the petitioner submits that the said issue can be left open and the Trial Court can frame an additional issue with reference to limitation.

12. The learned Advocate for the plaintiff submits at this

juncture that as the plaintiff also indulges in social service in his profession as a Medical Practitioner, the costs may be donated for the treatment of poor patients.

13. Considering the above, this petition is allowed. The impugned order dated 02/07/2018 is quashed and set aside and application Exhibit 120 is allowed with costs, subject to the following directions :-

(a) The petitioner shall deposit an amount of Rs. 5,000/- (Rs. Five Thousand only) as costs 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**”), on or before 31/01/2019 and a receipt shall be produced before the Trial Court on or before 08/02/2019.

(b) The additional written statement filed by the petitioner shall be taken on record.

(c) The Trial Court would peruse the additional written statement and would frame additional issues including the issue of limitation, within 4 (four) weeks from today.

(d) All the litigating sides are permitted to lead evidence even on the additional issues keeping in view that the plaintiff has concluded his evidence.

(e) The issue of limitation would be considered by the Trial Court on its own merits.

14. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

shp/-