

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 WRIT PETITION NO. 10033 OF 2018

DADASAHEB S/O DNYANESHWAR PAIGUDE
VERSUS
SUNITA W/O SHARAD SURVE AND OTHERS

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Advocate for Petitioner : Mr. Kulkarni Krishna K.
Advocate for Respondent Nos.1 to 4 : Mr. Vijay R. Langhe h/f
Mr. Sanket S. Shinde

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CORAM : V. K. JADHAV, J.
DATED : 17th December, 2019

PER COURT:-

1. Heard finally with consent at admission stage.
2. The petitioner is the original defendant no.2. The respondents/plaintiffs filed application Exhibit 147 for seeking amendment in the plaint. The petitioner/defendant no.2 strongly resisted the said application by filing say at Exhibit 151. Learned Joint Civil Judge, Junior Division, Tuljapur, by order dated 20.08.2018 below Exhibit 147 in Regular Civil Suit No. 8 of 2008 has allowed the said application with costs. Hence this Writ Petition.

3. Learned counsel for the petitioner/original defendant no.2 submits that the said amendment has been proposed belatedly though the suit came to be instituted in the year 2008. Learned counsel submits that the petitioner/original defendant no.2 and the original defendant no. 3 came to be added as defendants to the suit way back in the year 2009 by filing an application Exhibit 22 and even though they came to be added as party defendants to the suit, the application Exhibit 147 seeking amendment in the plaint in connection with their addition came to be filed in the year 2018. Learned counsel submits that in fact, it is a collusive suit between the plaintiffs and defendant no.1. Learned counsel submits that all these are the delay tactics and 10 years after addition of defendant nos. 2 and 3, the application Exhibit 147 seeking amendment in connection with their addition came to be filed. The trial court ought to have rejected the said application.

4. Learned counsel for the petitioner, in order to substantiate his contention, placed reliance on the case of *M. Revanna v. Anjanamma (died) by Legal Representatives and others*, reported in (2019) 4 SCC 332, wherein, the Supreme Court has held that if the amendment in the pleadings is sought after commencement of the trial, the same is not permissible except under conditions stated

in the proviso to Order VI Rule 17 of the Civil Procedure Code, 1908 and the *bona fides* of prayer for amendment as also prejudice to the other side should be taken into consideration.

5. Learned counsel for the respondents submits that the amendment sought by way of filing application Exhibit 147 was extremely formal in nature. Though the petitioner/original defendant no.2 and the defendant no.3 came to be added as party defendants in the year 2009, inadvertently, the plaint was not amended to the effect that the sale deeds executed in their favour by defendant no.1 are not binding on the plaintiffs. Learned counsel submits that the said amendment has not caused any prejudice to the defence of the defendant and the learned trial court has therefore rightly allowed the application Exhibit 147. No interference is required. There is no substance in this Writ Petition and the same is liable to be dismissed.

6. It appears that the petitioner/original defendant no.2 and the defendant no.3 came to be added by filing application Exhibit 22 in the year 2009. However, it further appears that the amendment in the plaint, in connection with their addition and the prayer to the effect that the sale deeds executed in their favour by original

defendant no.1 are not binding on the plaintiffs, remained to be mentioned/carried out. Even though the application Exhibit 147 came to be filed at a belated stage, however, in my considered opinion, the amendment so proposed in the application Exhibit 147 is formal in nature and it will not cause any prejudice to the defence of the petitioner/original defendant no.2. The petitioner/original defendant no.2 is added in the suit in the capacity as a purchaser of the suit land from original defendant no.1 and thus, knowing his status/position well in the suit, the proposed amendment will not cause any prejudice to his defence.

7. In the case of ***M. Revanna*** (supra), relied upon by the learned counsel for the petitioner, even the Supreme Court has also given importance to the *bona fides* of the prayer for amendment and also the prejudice to the other side. The Supreme Court has held that the same is required to be considered while allowing the amendment. In the given set of facts, since the proposed amendment is formal in nature and not causing any prejudice to the defence of the petitioner/original defendant no.2, I do not find any fault in the impugned order. Hence the following order:

ORDER

The Writ Petition is hereby dismissed.

(V. K. JADHAV, J.)

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