

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11173 OF 2019

SHAKIL ABDUL SSAHAB SHEKH
VERSUS
NASIK DIOCESAN TRUST ASSOCIATION PVT LTD AND OTHERS

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Advocate for Petitioner : Shri Ghatge M.V.
h/f Shri Deshpande Amit S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 28, 2019
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PER COURT :-

1. The petitioner / decree holder in Special Darkhast No. 137 of 2004 is aggrieved by the order dated 27.6.2019, by which, the executing Court has allowed application Exhibit 626, filed by the third party objectors, thereby permitting amendment to the objection application by imposing costs of Rs.10,000/-.
2. Despite service of notice through paper publication in Daily Pudhari at Nasik, Ahmednagar and Aurangabad editions, copies of which are placed on record, no appearance has been entered by any of the respondents.
3. The grievance of the petitioner / decree holder is that the judgment debtors are delaying the matter and are deliberately filing applications on record.

4. I have perused Exhibit 626. The objector has filed an application claiming that he stumbled across a sale deed dated 15.5.1883 and the original copy is already placed on record. An amendment is sought to the extent of inserting one sentence that the suit property was purchased by the Society for the Propagation of the Gospel (SPG Mission).

5. The learned Advocate for the petitioner submits that the judgment debtor had earlier taken a stand that the suit property was taken on lease and the finding of the trial Court sustained the same. The objector Shri Uday Danniel Khare, purportedly representing the Nasik Diocesan Trust Association Private Limited has pleaded in his objection application that the then leadership of the area had issued an order on the basis of which, the District Collector, Ahmednagar has issued a Government Sanad on 9.3.1886 permanently allotting the land to the said Society. Now, by the proposed amendment, it is sought to be pleaded that the Society has purchased the said suit property by the registered sale deed 15.6.1883. This amounts to altering the nature of the cause of action.

6. Considering the above, I find from the impugned order that the trial Court has merely recorded that the objector has not

mentioned the said sale deed in his objection application and it would be proper to have the document placed on record and amendment could be permitted even after the commencement of the final arguments.

7. I find that the trial Court has failed to assign reasons and has also not considered the above factors before granting Exhibit 626. So also, there is no explanation putforth in the application to indicate the circumstances, in which, the objector would be justified in adopting a completely new stand. Nevertheless, in execution proceedings and that too when the final arguments have commenced, amendment of such nature, wherein, a completely new theory is being putforth by the objector, cannot be permitted.

8. In view of the above, the impugned order dated 27.6.2019 is quashed and set aside and application Exhibit 626 stands rejected.

(RAVINDRA V. GHUGE, J.)

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