

((1))

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

WRIT PETITION NO.11393 OF 2016

1. Mansab s/o Farid Shaikh,
Age 50 years, Occu. Agril.
2. Madeenabee Mansab Shaikh,
Age 40 years, Occu. Agri. & Household,

Both R/o Ranjani, Tq. Kallam,
District Osmanabad ... PETITIONERS

VERSUS

1. Khuddus Ahmed Mujeeb Ahmed Siddiqui,
Age 58 years, Occu. Agri.,
2. Siddiqui Feroz Ahmed Mujeeb Ahmed,
Age 47 years, Occu. Agril.

Both R/o Ranjani, Tq. Kallam,
District Osmanabad ... RESPONDENTS

.....
Shri A.T. Jadhavar, Advocate for petitioners
Shri S.N. Wakure, Advocate for respondents
.....

CORAM : R.G. AVACHAT, J.

Date of reserving judgment : 27th August, 2019

Date of pronouncing judgment : 20th September, 2019

J U D G M E N T :

Rule. Rule returnable forthwith and heard finally with
the consent of learned counsel appearing for the parties.

2. This petition is directed against the order dated 13/9/2016, passed by the Court of 2nd Jt. Civil Judge, Junior Division, Kallam, on application Exh.14 in Regular Civil Suit No.1037/2015. By the impugned order, the application moved by the respondents (plaintiffs in the suit) for amendment of the plaint, came to be allowed.

FACTS:

3. The respondents are the plaintiffs in the suit while the petitioners are the defendants. The respondents/ plaintiffs filed the suit for declaration of their title to the agricultural lands, being Gut Nos.195 and 197, particularly described in para No.1 of the plaint. Three sale deeds executed by the deceased father of the respondents/ plaintiffs in favour of the petitioners/ defendants were sought to be set aside, alleging them to have been executed by their father without consideration, etc.

4. The respondents/ plaintiffs moved application for amendment of the plaint, contending that, their father, deceased Mujeeb Ahmed passed away in March 2013. The deceased had executed Hiba (Gift) in favour of the respondent No.2 on 2/4/2011.

The Hibanama was executed before a Notary Public. The respondent No.2 has accepted the Hibanama. It is the contention of the respondents/ plaintiffs that, they could not locate the Hibanama until a few days before the application for amendment was moved. While the articles of the deceased father were searched, the respondents could locate the Hibanama and, therefore, the application for amendment was moved, withdrawing the prayer for setting aside the sale deeds executed by the deceased Mujeeb Ahmed in favour of the petitioners/ defendants, with an introduction of prayer of declaration of title by virtue of Hibanama.

5. The Trial Court, on hearing the petitioners and the respondents, was pleased to allow the application.

6. Learned counsel for the petitioners/ defendants would submit that, by allowing the application for amendment of the plaint, the entire nature of the suit has been changed. The Trial Court should not have allowed the application for amendment. In support of his contention, learned counsel has relied on **Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka & ors.**, reported in **[2014 (1) Mh.L.J. 597]**, Anil s/o

Vishwanath Jadhav Vs. Pankaj s/o Indrajeet Bassi, reported in **[2010 (2) Mh.L.J. 220]**.

7. Learned counsel for the respondents would, on the other hand, submit that, the Trial Court has exercised its discretion to allow the amendment application. The proposed amendment was necessary to determine the real questions in controversy between the parties. The learned counsel ultimately urged for dismissal of the petition.

8. The application for amendment of the plaint was contested on the ground that no attempt was made to get the effect of Hibanama recorded in the revenue record of the suit lands, the Hibanama has not been acted upon. The nature of the suit would altogether be changed if the proposed amendment was allowed.

9. The Trial Court allowed the application since no issues were framed in the suit, no prejudice is likely to be caused to the petitioners/ defendants if the proposed amendment was allowed. The amendment is necessary for determine the dispute between the parties finally.

10. Order VI Rule 17 of the Code of Civil Procedure reads as under :

17. Amendment of pleadings :-

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

11. The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice. All amendments are generally permissible when they are necessary for determination of real controversy in the suit, inconsistently can be introduced by way of amendment.

12. The father of the respondents/ plaintiffs executed three sale deeds in favour of the petitioners/ defendants in respect of the suit lands way back in the years 2011 - 2013. The respondents/ plaintiffs came with a case that those sale deeds were without consideration and without delivery of possession. The sale deeds

were, therefore, stated to be void/ voidable and, therefore, sought to be cancelled with a prayer for declaration in that regard. By preferring an application for amendment, the plaintiff No.1 withdrew from the suit, contending that, father executed Hibanama in favour of plaintiff No.2 on 2/4/2011. It is also contended in the application that the Hibanama was located while the articles of the deceased father were searched on the eve of Eid festival.

13. It is true that, the nature of the suit has been substantially changed in view of allowing of the application for amendment of the plaint. There is, however, on record a Hibanama, allegedly executed by the deceased Mujeeb Ahmed before Notary Public on 2/4/2011. It is true that, the signature of the deceased appearing on the Hibanama and the sale deeds, if compared with a naked eye, may found to be different. The law is, however, very much clear that, merits of the proposed amendment cannot be gone into at the time of hearing of the application for amendment. The petitioners/ defendants have every right to contest the suit on all the grounds available to them. Whether the gift is legal one; had it been really executed by the deceased; has it been acted upon; whether registration of a Hibanama was mandatory. All these issues are to be gone into during hearing of

the suit. Since the document of Hibanama is appearing on record and the same is stated to be found 3 – 4 years after the institution of the suit, the Trial Court was justified in exercising the discretion in favour of the respondents/ plaintiffs to allow the application. The discretion has rightly been exercised. There would be no prejudice to the petitioner/s defendants. They would have every opportunity to contest the suit on merits.

14. In the aforesaid backdrop, no interference in the impugned order is warranted. The Writ Petition, therefore, fails. It is dismissed. Rule discharged.

(R.G. AVACHAT)
JUDGE

fmp/-