

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5009 OF 2018

Smt.Rukmini Shankar Anuse	.. Petitioner
Vs.	
Shri Shankar Krishna Anuse	
since deceased thru. Legal heirs	
Shri Shivaji Shankar Anuse and ors.	.. Respondents

Mr.Y.B.Lengare a/w Mr.Jotiram Jadhav, for the Petitioner.
Mr.D.W. Bhosale, for the Respondents No. 4 & 7.

CORAM : M.S.KARNIK, J.

DATE : 01st OCTOBER, 2019

PC. :

. Heard learned Counsel for the petitioner.

2. The petitioner is original plaintiff. The plaintiff filed Civil Suit bearing No. 284 of 2013 for declaration that sale deed dated 25/03/2013 executed by defendant No.1 in favour of defendant No.7 is not binding on the plaintiff's 1/4 th share in the suit property. The plaintiff prayed for partition and separate

possession of the suit property to the extent of 1/4 th share.

3. Defendant No.1 is the husband of the plaintiff. Defendants No.2 & 3 are the children of plaintiff and defendant No.1. Defendant No.1 sold the suit property to defendant No.7.

4. During the pendency of the Suit and after the issues were framed, the petitioner filed an application below Exhibit 24 for amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908. By the amendment, petitioner wanted to bring on record the compromise decree dated 11/11/1997 in Civil Suit No. 115 of 1994 between defendant No.1 and defendants No.2 & 3. It is the contention of the plaintiff that said compromise decree is executed by defendant No.1 and defendants No.2 & 3 in collusion with each other and only to deprive the plaintiff's rightful share. It is further averred that the plaintiff was not aware of the compromise decree.

5. The trial Court rejected the application on the ground that

the trial of the Suit has commenced and therefore, there is delay in filing the application. It is also rejected on the ground that the amendment is belated.

6. Learned Counsel for respondent No. 7 supported the impugned order. According to him, plaintiff is residing with defendant No.1 and defendants No.2 & 3. He would submit that with a view to get over sale deed, Suit has been filed by the plaintiff at the behest of defendants No. 1 to 3. He would further submit that even in the written statement which was filed as far back in 06/01/2014, the factum of the compromise decree between defendant No.1 and defendants No.2 & 3 was brought on record despite which plaintiff delayed filing of the application for amendment. The application according to him is belated and moreover, the same is not bonafide.

7. Heard learned Counsel. The Suit is for declaration that sale deed executed by defendant No.1 in favour of defendant No.7 is not binding on the plaintiffs 1/4th share in

the suit premises. The plaintiff has filed the Suit for partition and separate possession. By way of amendment, the plaintiff wanted to bring on record the factum of the compromise decree executed between defendant No.1 and defendants No.2 & 3. The said compromise was recorded on 11/11/1997 in an earlier Suit between defendants No. 1 to 3 to which plaintiff was not a party. According to the plaintiff she was not aware about the Suit in which the compromise decree came to be passed. Therefore, in this view the question of limitation can be kept open. Defendant No.7 is entitled to raise the issue of limitation. In this view of the matter, the application for amendment needs to be allowed keeping the question of limitation open.

8. Application Exhibit 24 is allowed subject to payment of cost of Rs.10,000/-. The cost to be paid by the petitioner to respondent within a period of 4 weeks from today. Petition is allowed.

(M.S.KARNIK, J.)