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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6679 OF 2019

Machindra Mahadu Karpe & anr. ..Petitioners
vs.
Shri Dyanoba Maruti Karpe (since deceased)
through his legal heirs
1A Shevantabai Dyanoba Karpe & Ors. ..Respondents
....
Shri D.G. Dhanure for petitioners.
Shri U.B. Nighot for respondent Nos. 1B to 1D, 2 to 4.

....
CORAM : M.S.KARNIK, J.

DATE : 19th SEPTEMBER, 2019

P.C. :

Heard learned counsel for the petitioners.

2. The petitioners are the original plaintiffs. The plaintiffs filed the suit for partition and separate possession. The issues are framed on 22/12/2000. The plaintiffs filed an application for amendment of the Plaint on 25/8/2009. The amendment is sought on the ground that the compromise decree passed on the basis of consent terms which were executed on 17/1/1996 are fraudulent and the plaintiffs have been deceived

into signing the consent terms in the earlier suit filed for partition and separate possession. It is the contention that though the plaintiffs were entitled to about 3 Hectares of land, under the so called consent terms the petitioners were in receipt much lesser portion. The petitioners also stated that Will dated 5/1/1998 executed by defendant No.1 in favour of defendant No.2 is suspicious and that defendant Nos. 2 and 3 had no right in the suit property being the illegitimate sons of defendant No.1. This in brief is the gist of amendment sought.

3. The trial Court rejected the application for amendment of Plaint as the issues are framed and that the trial has begun. According to the trial Court, the application is filed belatedly and that too without any satisfactory reasons as to why the compromise decree passed on the basis of consent terms executed on 17/1/1996 is termed as fraudulent almost after 13 years which now by amendment is sought to be brought on record.

4. Learned counsel for the petitioners submitted that the trial Court should have allowed the application as the

consent terms are fraudulent and the petitioners – plaintiffs are deceived into signing them. Moreover, learned counsel would submit that though the petitioners are entitled to about 3 Hectors under the consent terms, much lesser area is given to share of the petitioners. This has caused serious prejudice which the petitioners wanted to bring on record. Learned counsel submitted that he is also willing to pay heavy cost to compensate the respondents. Learned counsel would rely upon the decision of the Apex Court in the case of **B.K. Narayana Pillai v/s. Parameshwaran Pillai & another** reported in (2000) 1 SCC 712 to submit that the Courts have to adopt liberal approach in the matter permitting amendments. He would further submit that in the present case, considering the law laid down by the Apex Court, the Courts approach should be liberal particularly when any prejudice suffered by the other side can always be compensated by costs.

5. Learned counsel for respondent submitted that application for amendment is rightly rejected as issues are

framed and Trial has begun. According to him the application is belatedly filed and it will further delay the Trial which is already expedited by this Court. He submits that the consent terms are acted upon and the petitioners have in fact sold an area of 1 hector 86 R after the consent terms are executed. To counter this submission learned counsel for the petitioners relied upon the sale deed 24/9/1982 to contend that the property sold was not the one received as per the consent terms but it is a separate property purchased by the petitioners by the sale deed dated 24/9/1982. Learned counsel would therefore submit that in order to avoid multiplicity of the proceedings and with a view to have complete adjudication of the controversy between the parties, the trial Court should have allowed the application for amendment.

6. Heard learned counsel. I have gone through the order passed by the trial Court. In the present case, the issues have been framed as far back as on 22/12/2000. Thereafter the suit was dismissed which later came to be restored pursuant to the order dated 27.03.2019 passed by this Court subject to

payment of costs of Rs.50,000/-. This Court further directed the parties to appear before the trial Court on 2nd May, 2019 and observed that learned trial Judge shall take strict action in the matter if the adjournments are applied for so as to ensure that the suit can be effectively disposed of by 31st December, 2019.

7. The consent terms which the petitioners – plaintiffs now say are executed fraudulently depriving the petitioners of their rightful share are executed as far back as on 17/1/1996 in an earlier suit filed between the parties for partition and separate possession. The consent terms were very much to the knowledge of the petitioners at the time of filing of the present suit. The application for amendment of the Plaint is made only on 25/8/2009 almost after 13 years from the date of the execution of the consent terms. It is the contention of learned counsel for the respondents that the consent terms have in fact been acted upon in as much as the petitioners have sold some part of the property allotted to their share. Without commenting anything on this aspect as to whether the consent

terms have been acted upon or not, suffice it to observe that the plaintiffs have filed the application for amendment almost 9 years after the issues are framed. Even the suit filed by the plaintiffs which came to be dismissed for non prosecution was restored pursuant to the order passed by this Court on 27th March, 2019 by imposing cost of Rs.50,000/-. Considering that the suit is of the year 1997 and as this Court has already directed the trial Court to dispose of the suit by 31st December, 2019, I do not find this to be a fit case to interfere with the order passed by the trial Court refusing amendment to the Plaint in the exercise of this Courts jurisdiction under Article 227 of the Constitution of India. No doubt the Hon'ble Apex Court has held that a liberal approach has to be adopted in the matter of amendment of pleadings, however, in the facts of the present case I am not inclined to interfere with the order passed by the trial Court as this will have the effect of further delaying the suit which is filed way back in the year 1997. Moreover even the application for amendment is filed belatedly as the issues were framed as far back as on 22.12.2000.

8. It is however made clear that liberty to challenge the impugned order in Appeal is kept open in case the decree is passed adverse to the plaintiffs.

9. The petition is therefore dismissed with no order as to costs.

10. Learned counsel for the petitioners requests that the trial Court be directed to defer the hearing of the suit by a period of 4 weeks as the trial Court is not inclined to adjourn the proceedings in view of the order dated 27th March, 2019 passed by this Court. The request is rejected.

(M.S.KARNIK, J.)

Diksha
Rane

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signed by
Diksha Rane
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