

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1019 WRIT PETITION NO.3503 OF 2017

MUNNABAI MOHANLAL BADODE AND OTHERS
VERSUS
SANJAY RAMCHANDRA KOTIYE AND OTHERS

.....
Advocate for Petitioners : Mr. Joshi Milind M.
A.G.P. for respondent No.2-State: Mr. K.B. Jadhavar
Advocate for Respondents 1, 3 to 6: Mr. R.D. Thorat
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CORAM : V. K. JADHAV, J.
DATED : 17th JANUARY, 2020

PER COURT:-

1. By consent of both sides heard finally at admission stage.
2. The petitioners are the original defendant Nos. 1 to 5. The respondent No.1 has instituted Special Civil Suit No. 32 of 2015 for declaration of ownership in respect of suit house and further declaration that the judgment and decree passed in Regular Civil Suit No. 6 of 2002 is not binding upon him. Pending the suit, the respondent No.1-plaintiff has filed an application Exh.41 under Order VI Rule 17 of C.P.C. for amendment in the plaint. The petitioners herein have strongly resisted the said application by filing their say at Exh.55. After hearing both the parties, by impugned order dated 23.11.2016 below Exh.41, the learned 4th Joint Civil Judge, Senior Division, Aurangabad has allowed the said application. Hence, this writ petition.
3. Learned counsel for the petitioners-original defendant Nos. 1 to

5 submits that the judgment and decree passed in R.C.S. No. 6 of 2002 has attained finality and in execution of the decree passed in the said suit i.e. R.C.S. No. 6 of 2002, the petitioners got possession of the suit property. Learned counsel submits that the proposed amendment is as against the possession received by the petitioners in execution of decree passed in R.C.S. No. 6 of 2002 which has attained finality and as such, the application itself is not maintainable. Learned counsel submits that in the said R.C.S. No. 6 of 2002 all questions those are raised in the present suit have been dealt with and adjudicated upon and the said judgment and decree has attained finality. In view of the same, the trial court should have rejected the application Exh.41 filed by the respondent-plaintiff.

4. Learned counsel for the respondent-plaintiff submits that at the time of considering the application seeking amendment the merits after the amendment is carried out cannot be considered. Learned Judge of the trial court has correctly observed the same and allowed the application. There is no substance in this writ petition.

5. It appears that in Special Civil Suit No. 32 of 2015 which is subject matter of present writ petition in terms of prayer clause "b" there is specific prayer to the effect that it may be declared that the judgment and decree dated 19.9.2006 passed by the Civil Judge (Junior Division), Soygaon in R.C.S. No. 6 of 2002 is not binding upon the plaintiff. On careful perusal of the contents of application Exh.41, it appears that by

way of proposed amendment the respondent plaintiff is bringing to the notice of the Court that in execution of the warrant issued in R.D. No. 1 of 2007 filed in connection with the judgment and decree passed in R.C.S. No. 6 of 2002 which has attained finality, on 28.4.2015, the possession of the suit property has been delivered to the petitioners and the respondent-plaintiff came to be dispossessed from the suit property. In the backdrop of these facts, further relief is sought in the suit to restore the possession in respect of the suit property. The said insertion of relief by way of amendment in consonance with the earlier prayer seeking declaration as to judgment and decree passed in R.C.S. No. 6 of 2002 is not binding on the respondent-plaintiff. So far as the merits and if the adjudication in the earlier suit bearing Special Civil Suit No. 6 of 2002 which has attained finality is again claimed by the respondent-plaintiff by institution of the present suit, the petitioner is always at liberty to file an application under Order XIV Rule 2 of C.P.C. for framing preliminary issue at that point or he may file an application for rejection of the plaint etc. However, at the time of considering the application seeking amendment of plaint, there is no reason to consider the merits of the proposed amendment. I do not find any error in the order passed by the trial court. There is no substance in this writ petition. Hence, the writ petition is dismissed and disposed of accordingly.

(V. K. JADHAV, J.)

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