

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 WRIT PETITION NO. 8059 OF 2005
WITH CA/6578/2011 IN WP/8059/2005

PADMABAI W/O VINODKUMAR TALREJA
VERSUS
VASUNDHARABAI W/O HARIHARRAO PATHARKAR AND
OTHERS

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Advocate for Petitioner : Mr. P. P. Mandlik
Advocate for Respondent No.1 : Mr. M. D. Narwadkar
Advocate for Respondent Nos. 2 to 6 : Mr. A. S. Deshmukh

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CORAM : V. K. JADHAV, J.
DATED : 31st JANUARY, 2020

ORDER :-

1. Heard both sides.
2. Learned counsel for the petitioner/original defendant no.8 restricts this Writ Petition to the extent that the trial court, while allowing the application for amendment filed by the respondent/plaintiff, has not specifically stated in the order that the said amendment does not relate back to the date of the suit, however, it shall be deemed to have been brought before the court on the date on which the application seeking amendment was filed. Learned counsel submits that the suit has been instituted in the

year 1991 and this application under Order VI Rule 17 of C.P.C. came to be filed in the year 2005 for including a new prayer pertaining to the avoidance of the sale deed. Learned counsel for the petitioner/original defendant no.8, in order to substantiate his contention, placed reliance on the case of ***Sampath Kumar v. Ayyakannu***, reported in **AIR 2002 SC 3369**.

3. Learned counsel for respondent no.1/plaintiff submits that the trial court, in para 6 of the order dated 20.09.2005 passed below Exhibit 190 in Regular Civil Suit No. 239 of 1991, has considered the provisions prior to the effect of amendment of the year 2002 in the Code of Civil Procedure. It is also observed by the trial court that in spite of the directions given by the trial court on the application filed by defendant no. 8 (petitioner herein) to reject the plaint, the respondent / plaintiff has filed the application at a belated stage. It is also observed in the same paragraph by the trial court that the contentions raised by the defendants are devoid of merits because the plea of time barred amendment cannot be considered at this stage which is required to be considered at the time of final hearing and for that purpose only, the application cannot be rejected as contended by the

defendants. Learned counsel submits that in the light of the said observations, the trial court is bound to consider the effect of the said amendment in terms of the ratio laid down in the aforesaid case law ***Sampath Kumar v. Ayyakannu***. There need no modification in the impugned order to that effect at this stage after a gap of more than 15 years.

4. It appears that though the suit is of the year 1991, because of the interim stay granted by this Court, the further proceedings in the suit are stayed from the year 2005.

5. In the case of ***Sampath Kumar v. Ayyakannu*** (supra), the Supreme Court in para Nos. 10 and 11 has made the following observations:

“10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relating back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. (See observation in Siddalingamma and Anr. v. Mamtha Shenoy, [2001] 8 SCC 561.

11. *In the present case the amendment is being sought for almost 11 Years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.”*

6. In the instant case also, the amendment is sought after almost 14 years. In view of the same and since the trial court has made observations to that effect in para 6 of the impugned order, the trial court is bound to consider the same. This point is kept open in terms of the observations made by the trial court in para 6 of the impugned order. In the light of the observations made by the Supreme Court in the case cited above in paragraph nos. 10 and 11, the trial court may pass appropriate order while disposing off the suit. In view of this, I proceed to pass the following order:

ORDER

I. The Writ Petition is hereby dismissed in terms of the observations made as above.

II. Rule discharged.

III. Civil Application No. 6578 of 2011 also stands disposed off.

(V. K. JADHAV, J.)

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