

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

5 WRIT PETITION NO.5815 OF 2009

KHANDERAO NARAYANRAO UNDEGAONKAR
VERSUS
YAMUNABAI BALKRISHNA DESHPANDE AND OTHERS

...
Advocate for Petitioners : Mr. S.S.Jangada h/f Mr. Deshmukh
Sachin S.

Advocate for Respondent Nos.1 to 4 : Mr. Latange V. P.

...

CORAM : V. K. JADHAV, J.
DATE : 24.02.2020

PER COURT :-

1. Heard both the sides.
2. In a pending suit of the year 1997 bearing Regular Civil Suit No.272 of 1997 instituted by the respondents – plaintiffs for declaration and perpetual injunction in respect of the suit house, the respondents – plaintiffs have filed an application Exh.58 under Order 6 Rule 17 of the Civil Procedure Code for carrying out the amendment in the plaint in terms of the subsequent events. The respondents – plaintiffs contend that as a subsequent event, the respondents – plaintiffs have lost the possession of the suit property and as such the amendment

is sought in the plaint to the extent of the recovery of the possession of the suit property. The learned 4th Joint Civil Judge Junior Division, Parbhani by impugned order dated 05.05.2009 below Exh.58 in Regular Civil Suit No.272 of 1997 allowed the said application. Hence, this Writ Petition.

3. The learned counsel for the petitioners – defendants submits that the conduct of the respondents – plaintiffs is questionable. The Trial Court has refused to protect the so called possession of the plaintiffs over the suit property by issuing the order of temporary injunction and even the Miscellaneous Civil Appeal preferred against the said order passed by the Trial Court also came to be dismissed by the District Court, the respondents – plaintiffs have almost lost the interest in the suit. The learned counsel submits that in consequence thereof not only the suit was dismissed in default but also the application seeking restoration of the suit also came to be dismissed in default. However, after a long gap, the respondents – plaintiffs could succeed in restoration of the suit and thus with some ulterior motive filed the application, after the suit has restored, for amendment in the plaint to the extent of recovery of possession. The learned counsel submits that

the proposed amendment would change entirely the nature of the suit. However, the Trial Court has not considered the same and allowed the application erroneously.

4. The learned counsel for the respondents – plaintiffs submits that after dismissal of the suit in default, the respondents – plaintiffs have filed an application for restoration of the same and the said application also came to be dismissed in default, however, finally the Trial Court has restored the suit. There was a gap between the dismissal of the suit and its restoration and the petitioner – defendant has taken the undue advantage of the same. The petitioner – defendant has obtained the construction permission from the Municipal Council in collusion and dispossessed the respondents – plaintiffs from the suit property. By way of the proposed amendment paragraph No.6-A, the respondents – plaintiffs have not only brought to the notice of the Court the revision preferred against the construction permission granted by the authority and the interim relief of not to construct the suit premises pursuant to the construction permission was also granted by the revisional authority but also brought to the notice of the Court that he was illegally dispossessed by the

petitioner – defendant with a ulterior motive to grab the suit property. The learned counsel submits that the Trial Court has rightly considered the same and allowed the application Exh.58. There is no substance in this Writ Petition and Writ Petition is thus liable to be dismissed.

5. I have carefully gone through the contents of application Ex.58. It appears that the Regular Civil Suit No.272 of 1997 came to be dismissed in default at one point of time and even its restoration proceedings also came to be dismissed in default. However the respondents – plaintiffs succeeded in restoring the original application and so also the suit however, during this course, the considerable time has been spent. According to the respondents – plaintiffs, taking undue advantage of this, the petitioner – defendant even by flouting the interim preventing order of the Commissioner in revision, started making construction over the suit property by dispossessing the respondents – plaintiffs, in the month of February 2008. Even the respondents – plaintiffs have preferred the revision before the Commissioner on 17.05.2008. In the backdrop of all these factual aspect, the respondents – plaintiffs sought the amendment in the suit seeking recovery of

the possession. It also appears from the impugned order that till passing of the impugned order, the evidence in the trial was not commenced. In terms of the subsequent event, the respondents – plaintiffs seek the amendment for recovery of the possession of the suit property. I do not think that the Trial Court has committed an error in allowing the said application. It further appears that the suit is of the year 1997 and the petitioner – defendant has also obtained the interim relief from this Court. As a result thereof, the further proceedings of the suit are stayed and the said suit is still pending. In the facts and circumstances of the present case, I find no fault in the order passed by the Trial Court. Moreover, considering the old pendency of the suit, I deem it appropriate to issue certain directions to the Trial Court to dispose off the suit in expeditious manner. Hence, I proceed to pass the following order :

ORDER

- (i) Writ Petition is hereby dismissed.
- (ii) The Trial Court is hereby directed to dispose off the suit bearing Regular Civil Suit No.272 of 1997,

as expeditiously as possible, preferably within a period of one (1) year from the date of this order.

(iii) The Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)

...

vmk/-