

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

11 WRIT PETITION NO.6796 OF 2018

Ramchandra Nivrutti Gaysamudre
Age : 65 years, occ : pensioner
R/o Postman Colony, Shahu Nagar,
Beed.

Versus

1. Dr. Ravishankar Nivrutti Gaysamudre
Age : 52 years, occ : medical practitioner
R/o Shahu Nagar, Beed.
2. Ujwala w/o Arun Maskar
Age : 42 years, occ : housewife
R/o Beside Dr. Satyapal Jadhav's
Hospital, Pangari Road, Shahu
Nagar, Beed.
3. Ramesh Narayan Shinde
Age : 28 years, occ : agri.,
R/o Shinde Nagar, Canal Road,
Beed.

...

Mr. S.D. Joshi, Advocate for the petitioner.
Mr. C.V. Thombre, Advocate for respondent No.1.
Mr. H.V. Tungar, Advocate for respondent No.3.

...

CORAM : **Rohit B. Deo, J.**

DATE : 7th January 2020.

ORDER :-

. Rule. Rule is made returnable forthwith. Heard finally with consent of the parties.

2. The petitioner, who is the original defendant No.1 in a suit brought by respondent No.1 for declaration of ownership and injunction, is aggrieved by the rejection of the application by trial Court, preferred under Order VI Rule 17 of the Code of Civil Procedure for permission to amend the written statement.

3. The trial Court has held that the petitioner – defendant No.1 did not demonstrate that despite due diligence the matter could not have been raised before commencing of the trial. While it is not in dispute that the trial did commence and as a matter of fact the trial Court has significantly progressed since there was no interim order passed by this Court staying the proceedings, the question would really be whether the amendment was necessary.

4. Petitioner – defendant No.1 sought to amend the written statement to incorporate reference to the proceeding in Regular Civil Suit No. 59/2005. According to defendant No.1, the said Civil Suit was instituted by defendant No.2 against defendant No.1 and the plaintiff was impleaded as

defendant No. 2-F. Defendant No.1 contends that while dismissing the suit a finding is recorded by the Civil Court that defendant No.1 is in possession of the suit property.

5. It is trite law that a litigant is not expected to plead evidence. Defendant No.1 has already taken a stand that he is in possession of the suit property. Needless to say, defendant No.1 is entitled to adduce evidence in support of the plea that he is in possession. If any finding is recorded by the Competent Court and if the said finding is relevant, it would be for the trial Court to consider the evidentiary value thereof, if any, in the light of provisions of Sections 40 to 44 of the Indian Evidence Act, 1872. The other averments which defendant No.1 sought to incorporate concerns Regular Civil Suit No. 71/2008 preferred by plaintiff and was withdrawn on 04.05.2009 with liberty to file fresh suit on the same cause of action. According to defendant No.1, the present suit is filed beyond the period of limitation. In view of the provisions of Section 3 of the Indian Limitation Act, whether such a plea is specifically raised or otherwise, the trial Court would be expected to deal with the issue of limitation if the issue involves a pure question of law or if the foundational facts are not in dispute.

6. I have no reason to assume that the trial Court would not consider the submission on the aspect of limitation from the perspective of the legal position.

7. In any event, considering that the trial is significantly progressed, I do not find it appropriate to interfere in the writ jurisdiction.

8. Subject to observations made supra, the petition is dismissed. Rule is discharged.

(ROHIT B. DEO, J.)

VD_Dhirde