

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

991 WRIT PETITION NO.9806 OF 2017

DATTA S/O VASANT BELHEKAR AND OTHERS
VERSUS
PRAKASH S/O MAHADU SHINDE

.....
Advocate for Petitioners : Mr. Ankush N. Nagargoje
Advocate for Respondent : Mr. Darshan D. Pokharkar
.....

CORAM : V. K. JADHAV, J.
DATED : 10th JANUARY, 2020

PER COURT:-

1. Leave to add the original defendant No.5 Sunita as party respondent.
2. Learned counsel for the petitioners has made a statement in para 20 that original defendant No.5 Sunita is also with the petitioners, but she was not available for signing the Vakilpatra at the time of filing of this writ petition and therefore, she is not added as a party to the petition. In view of the same, notice is not issued to the newly added respondent No.2 (original defendant No.5).
3. By consent, heard finally at admission stage.
4. The petitioners are the original defendant Nos. 1 to 4 and 6. The respondent-original plaintiff has instituted the suit for declaration of ownership and rectification of sale deed. The petitioners-original

defendant Nos. 1 to 4 and 6, alongwith respondent No.2 herein, have strongly resisted the suit by filing written statement. Further, in addition to written statement, the petitioners alongwith the respondent No.2 also filed a counter claim. The petitioners have filed an application Exh.60 for carrying out amendment in the written statement as detailed in para 8, para 8-A, para 9, 9-A, para 10, 10-A and para 11-A and 11-A-1. The respondent-plaintiff has strongly resisted the said application. The learned Judge of the trial court, by impugned order dated 17.3.2017 below Exh.60 in R.C.S. No. 718 of 2011, rejected the said application. Hence, this writ petition.

5. Learned counsel for the petitioners submits that in the written statement of the counter claim, there are basic pleading to the effect that deceased Vasant had executed the sale deed illegally without any rights and on the basis of the said sale deed, after institution of the suit, the respondent-plaintiff is trying to obstruct the peaceful possession of the petitioners-defendants over the suit land. Learned counsel submits that in terms of the said basic pleadings in the written statement/counter claim, the application seeking amendment came to be filed to elaborate and explain the same. The petitioners-defendants have not raised any new ground nor the amendment sought for would cause any prejudice to the claim made by the respondent-plaintiff. Learned counsel submits that though the trial court has allowed the amendment consequential to the main amendment, rejected the application to the extent of main

amendment in terms of para 8-A and 9-A.

6. Learned counsel for the respondent-original plaintiff submits that on the basis of the pleadings of the parties, learned Judge of the trial court by order dated 13.8.2015 framed issues 'Exh.34' wherein issue No.2 pertains to the counter claim of the petitioners-defendants whether the counter claim is within limitation or not. Learned counsel submits that thereafter, the petitioners-defendants with some ulterior motive have filed an application Exh.60 and made an attempt to explain that the counter claim is within limitation. Learned Judge of the trial court in para 5 of the impugned order has, therefore, rightly observed that the petitioners-defendants are trying to explain after framing of issue that their counter claim is within limitation and thus by way of amendment, they are trying to plead evidence which is not permissible. There is no substance in this writ petition and the same is liable to be dismissed.

7. On careful perusal of application Exh. 60, the order passed by the trial court so also the written statement and the counter claim filed by the petitioners, it appears that the basic pleading is there in the written statement. It has been specifically pleaded that deceased Vasant had executed sale deed though he had no right or title in respect of the suit land. Even in para 9 of the counter claim, the petitioners-defendants have specifically pleaded that cause of action arose only after the plaintiff instituted the suit. On perusal of the

proposed amendment in application Exh.60, it appears that in para 8-A of the proposed amendment, the petitioners-defendants have elaborated said defence and further stated about the cause of action. Even though by way of proposed amendment if the basic pleadings are elaborated to some extent, it is for the trial court to consider the point of limitation on its own merits by referring the relevant Articles of the Limitation Act. I do not think that the proposed amendment would cause any prejudice to the respondent-plaintiff. In view of the same, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby allowed.
- II. The impugned order dated 17.3.2017 passed below Exh.60 in Regular Civil Suit No. 718 of 2011 by the Joint Civil Judge, Senior Division, Sangamner to the extent of rejection of application is hereby quashed and set aside.
- III. The application No.60 is allowed in terms of its prayer clauses in its entirety.
- IV. Writ petition is disposed of.

(V. K. JADHAV, J.)

rlj/