

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

943 WRIT PETITION NO.6159 OF 2021

**SUSHILABAI VASANTRAO WALEKAR
VERSUS
GANGADHAR SHANKARRAO WALEKAR AND OTHERS**

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Advocate for Petitioner : Mr. Natu Sharad V.

CORAM : MANGESH S. PATIL, J.

DATE : 10.08.2021.

PER COURT :

Heard learned advocate Mr. Natu finally as none of the respondents appear in spite of service.

2. The petitioner who is the original plaintiff is impugning the orders passed by the Trial Court on the applications (Exhs. 186 and 190) seeking to recast the issues under Order XIV of the Code of Civil Procedure and recalling the petitioner for further cross-examination pursuant to the provisions of Order XVIII Rule 17 of the Code of Civil Procedure.

3. The learned advocate Mr. Natu would submit that since inception the petitioner has been asserting her title to the suit property and claiming possession. She was examined and cross-examined in the year 1998. However, she chose to amend the plaint and claimed declaration of her ownership and possession of the suit property. Post such amendment that both the requests have been made by the respondents/defendants.

4. He would submit that as far as issue No. 3 touching the aspect of previous exchange of the properties on the basis of some agreement has been framed pursuant to the pleadings. He would submit that now that the petitioner has chosen to prosecute the suit seeking declaration of her title

and possession existence or otherwise of the alleged agreement regarding exchange of the properties is no longer relevant.

5. The learned advocate Mr. Natu would further submit that since the petitioner is now claiming possession on the basis of title and as the respondents are not coming with any plea of adverse possession as is contemplated under Article 65 in the Schedule to the Limitation Act, 1963, even the question of limitation need not be gone into and the Issue No. 7 ought not to have been framed nor was there any reason for recalling her for further examination touching that aspect.

6. I have carefully considered the submissions and perused the papers including the impugned orders. As can be seen, correctly or incorrectly or may be resorting to some illadvised the suit as was originally filed was resorting to the provisions of Section 6 of the Specific Relief Act which does not require any question as regards title to be gone into. The petitioner was also examined and cross-examined way back in the year 1998. For whatever reasons, she applied for amendment of the plaint in the year 2020-2021 and has apparently changed the complexion of the suit from the one filed under Section 6 of the Specific Relief Act to a suit for possession based on title. Needless to state that such amendment naturally would require different scrutiny. It is precisely for this reason that the learned Judge of the Trial Court seems to have allowed the application of the respondents (Exh. 186) and recast the issues.

7. True it is that now that the petitioner is claiming possession based on title existence or otherwise of the agreement dated 23.02.1987 regarding exchange of the properties that too without there being any registered document though it is required to be compulsorily registered, the Issue No. 3 is certainly irrelevant and ought not to have been framed.

8. However, having noticed that in a suit filed in the year 1997 by virtue of an amendment in the year 2021 the petitioner has now changed her stand

and is claiming possession based on title, the issue of limitation has been framed at Sr. No. 7 and by the impugned order on the Application (Exh. 190) she has been recalled for further cross-examination touching the Issue Nos. 7 and 8. Issue No. 8 only pertains to a general entitlement of the petitioner to claim the relief that would naturally depend inter alia on the answer to the Issue No. 7 regarding limitation.

9. One need not in this petition enter into and decide the issue either way which is a matter better left to be decided by the Trial Court. The fact remains that an issue regarding limitation has been framed and the respondents now want to cross-examine the petitioner touching that post amendment carried out in the year 2021 after more than 20 years of filing of the suit.

10. Resultantly, the Writ Petition deserves to be allowed but only partly. The impugned orders to the extent of framing of Issue No. 3 and the order recalling the petitioner for further cross-examination in respect of Issue No. 3 are quashed and set aside.

11. The Writ Petition is disposed of accordingly.

(MANGESH S. PATIL, J.)

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