

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

**WRIT PETITION NO.10977/2021
WITH
CIVIL APPLICATION NO.11675 OF 2021**

- 1] MANOJ PRALHAD MAHAJAN**
- 2] SAU. UJWALA MANOJ MAHAJAN**
- 3] SATISH PRALHAD MAHAJAN**
- 4] SAU.SUJATA SATISH MAHAJAN**

VERSUS

- 1] GAJANAN TIKARAM MAHAJAN THROUGH
POWER OF ATTORNEY HOLDER SALIL
GAJANAN MAHAJAN**

- 2] JUDE JOSEPH DSOUZA**

...

**Advocate for petitioners : Sandesh R.Patil
Advocate for respondent no.1 : Shah Subodh P. & P.B.Gamot**

...

**CORAM: MANGESH S PATIL,J.
DATE : 28.10.2021**

P.C.:

Heard

2] The original defendant nos. 1 to 4 are impugning the order passed by the trial Court on the application of the respondent no.1 (Exh.100) allowing him to carry out amendment in the plaint under Order VI Rule 17 of the Civil Procedure Code as also for adding defendant no.5 under Order I Rule 10 of the C.P.C.

3] The respondent no.1 claiming to have purchased the

suit property has filed the suit seeking perpetual injunction against the petitioners from obstructing his possession and also for mandatory injunction alleging that they have encroached over a portion of the suit property. By moving the application for amendment, they sought to plead that during pendency of the suit the petitioners have sold the suit property to the person to be added as defendant no.5 i.e. the respondent no.2 herein.

4] The learned advocate for the petitioners would submit that the application is not *bona fide* and suffers from delay and laches. He would submit that even the dispute between the parties as to the identity of the property purchased by respondent no.1 has been settled long back. Respondent no.1 also never disputed attempt by the petitioners to obtain Non Agriculture use permission. He had already tendered affidavit in lieu of his examination in chief and at late stage tried to make amends. The proposed amendment would change the nature of the suit, the respondent no.1 can file a separate suit and seek appropriate reliefs. The learned trial Court has erred in overlooking all these aspects while allowing the application for amendment. He would cite decision of the Supreme Court in the case of M. Revanna V.s Anjanamma (by L.Rs.) and others); 2020 (1) Mh.L.J. 143.

5] Learned advocate for the respondent no.1 supports the order. He submits that the veracity or otherwise of the

pleading to be added cannot be judged at this juncture. It is a matter of fact that the petitioners have sold the property to the respondent no.2 on 24/8/2020 by a registered sale deed. It is the self same property in respect of which the suit has been filed. It was necessary to avoid multiplicity of proceedings. The trial Court has considered all these aspects and has rightly allowed the application (Exh.100).

6] The learned advocate would further submit that there is no delay in seeking the amendment. Soon after the sale deed was executed within 2 months it is being sought to be challenged. A plausible explanation was furnished in the form of a death as also the pandemic in which respondent no.1's son suffered the infection. The respondent no.1 is not to gain anything by vexing the issue.

7] I have carefully considered the rival submissions, the impugned order and the pleadings of the parties before the lower court. The respondent no.1 has specifically described the suit property in plaint para no.1. He also specifically averred that the petitioners were bent upon to obstruct his possession and even made an attempt to encroach over it and carried out some construction. He tendered the evidence in the month of March 2018 and also examined the witness in September 2018. It is also apparent that around the same time the petitioners have executed a registered sale deed dated 24/8/2020 in favour of the respondent no.2. Within few

months thereafter i.e. in the month of March 2021 the application (Exh.100) was moved. It was specifically averred in that application that there was a death in the family and the son of the respondent no.1 also suffered from Corona. The facts have not been controverted by the petitioners in their say (Exh.105).

8] Considering the nature of the proposed amendment, the respondent no.1 merely sought to add the respondent no.2 who has purchased the property from the petitioners as defendant no.5. He also proposed to add that the petitioners have sold the suit property to the respondent no.2 illegally and were intending to challenge its validity. It is not the fact that the respondent no.1 is intending to challenge the sale deed concerning any other property. It is his firm stand that the petitioners have sold the suit property to the respondent no.1.

9] If such is the state of affairs, irrespective of validity or otherwise of the facts sought to be brought on record by way of proposed amendment, opportunity to the respondent no.1 cannot be denied to challenge the same and to prove that the suit property has been sold by petitioners to the respondent no.2 illegally. By no stretch of imagination, therefore, can it be said that the proposed amendment would change the nature of the suit.

10] The decision of the Supreme Court in the case of *M.Revannappa (supra)*, as can be seen from the observations in paragraph no.6, were pertaining to the peculiar facts and circumstances obtaining before the Supreme Court. The petitioners are not entitled to bank upon it. There is nothing on the record of the matter in hand to demonstrate that the respondent no.1 is seeking amendment mischievously or with some ulterior motive.

11] The Writ Petition is dismissed. The Civil Application is disposed of.

[MANGESH S. PATIL,J.]

umg/