

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 237 OF 2020

1. Narayan Kishanrao Talekar
age 48 years, occ. Service
r/o Bhokardan, Tq. Bhokardan
Dist. Jalna.

2. Ravindra Madhukarrao Deshpande
age 57 years, occ. Agri.
r/o Near Khandoba Mandir, Bhokardan
Tq. Bhokardan, Dist. Jalna.

Petitioners

Versus

1. Shaikh Idris Shaikh Samad
age 38 years, occ. Business
r/o Rafiq Colony, Bhokardan
Tq. Bhokardan, Dist. Jalna.

2. Chief Executive Officer
Nagar Parishad, Bhokardan
Tq. Bhokardan, Dist. Jalna

Respondents

Mr. A. S. Kulkarni, Advocate holding for Mr. J. V. Deshpande ,
Advocate for the petitioner.

Mr. A. S. Mantri, Advocate for respondent No. 1.

Mrs. A. A. Puranik and G. G. Ingle, Advocate for respondent No. 2.

CORAM : M.G. Sewlikar, J.

DATE : 3rd AUGUST, 2022.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.

2. With the consent of the parties, heard finally at the stage of admission.

3. Facts in brief are that, respondent No. 1 filed a suit for perpetual injunction against petitioners and respondent No. 2. During the pendency of this suit i.e. RCS No. 29/2014, plaintiff – respondent No. 1 herein filed an application for amendment thereby seeking addition of prayer of declaration of ownership. By the same application, he sought leave to add respondent No. 3 as party to the suit.

4. This application was opposed by petitioners.

5. Learned Trial Court allowed the application for amendment and added petitioner No. 1 as defendant No. 3 to the suit. This order is impugned in this petition.

6. Learned counsel for petitioner submits that the original suit was for perpetual injunction. It has been converted into a suit for declaration of ownership. By amendment, the nature of the suit

has been changed.

7. Learned counsel for respondent No. 1 submits that the suit was filed on 25th February, 2014 and on the same day, petitioner No. 2 executed sale-deed in favour of petitioner No. 1. Respondent No. 1 was not aware of this transaction. Therefore, being ignorant of this transaction, the suit for perpetual injunction came to be filed.

8. Learned counsel for petitioners does not dispute this position. Respondent No. 1 was not aware of the sale-deed having been executed by petitioner No. 2 in favour of petitioner No. 1 as the date of filing of the suit and the date of said transaction are the same. Therefore, the amendment has been correctly allowed by the learned Trial Court. No fault can be found with this order.

9. Learned counsel for petitioner submits that petitioner No. 1 has been added in personal capacity. Learned counsel for respondent No. 1 submits that he ought to have been added as the Secretary of the Devsthan. She seeks leave to correct and add Devsthan as party. Leave granted.

10. Learned counsel for petitioner submits that when this matter was heard on 7th January, 2020, he had made a statement that he would not make any grievance at any point of time. He clarifies that this order was passed as petitioner No. 1 was added in personal capacity. The said statement would not be binding on him. If the correction is carried out, this statement will not come in the way of petitioners No. 1 and defendant No. 3 as defendant No. 3 was not made a party on behalf of the Devsthan.

11. In view of this, the petition has no substance. Hence, it is dismissed.

(M. G. SEWLIKAR)
Judge

dyb