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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3607 OF 2022

Deochand Shivilal Dedwal and Another PETITIONERS

VERSUS

Babasaheb Asaram Kanake and Others RESPONDENTS

.....
Mr. P. U. Gujrathi, h/f Mr. V. P. Latange, Advocate for petitioners
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 31st MARCH, 2022

ORDER :

1. The petitioners are aggrieved by the order passed by the learned third Joint Civil Judge, Senior Division, Aurangabad below Exhibit-53 in Regular Civil Suit No. 1123 of 2014, thereby allowing the application of the plaintiff – respondent, under Order VI, Rule 17 of the Civil Procedure Code and permitting the plaintiff to amend the plaint.

2. Learned advocate for the petitioners – original defendants No. 11 and 12, has strenuously submitted that by way of amendment, a time barred claim is being raised by the respondent – plaintiff, which ought not to have been allowed by the trial court. He submits that the sale deed dated 16th January,

1981, is sought to be challenged by the plaintiff by the amendment and a relief is claimed that the same is not binding on him.

3. According to the learned advocate, the present application Exhibit-53 is filed by the plaintiff, after deletion of section 9-A of the Civil Procedure Code. He, therefore, submits that the impugned order cannot sustain and the same is liable to be quashed and set aside.

4. Perusal of the impugned order reveals that the trial court has allowed the amendment on the ground that the said amendment is necessary for the just decision of the suit and for deciding real controversy between the parties. The trial court has held that taking into consideration the pleadings of the parties in respect of the said sale deed, evidence is necessary to be led by the parties and it is a mixed question of law and facts. The amendment application is filed prior to the commencement of the trial and, therefore, the trial court allowed the application.

5. It is a settled legal position that amendment is to be liberally allowed. Merits of the amendment cannot be considered by the trial court while allowing the amendment application. The impugned order is a well reasoned order and this Court does not

find any illegality or perversity or an error of jurisdiction in the impugned order. The writ petition, being devoid of merits, is dismissed. The point of limitation is kept open for consideration by the trial court at the time of final decision of the suit. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

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