

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

WRIT PETITION NO.3932 OF 2022

**GANESH MANIKRAO SARUK
VERSUS
SHIVAJI SHRIMANT LAVANDE AND ANOTHER**

. . .
Advocate for Petitioner : Mr. S. S. Shete h/f. Mr. L. B. Palod.

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CORAM : MANGESH S. PATIL, J.

DATED : 15 JULY 2022

PER COURT :

The petitioner is the original sole defendant aggrieved by the order passed by the trial court permitting the respondent no.1 to amend the plaint.

2. I have heard the learned advocate for the petitioner.
3. Learned advocate submits that the application was filed belatedly, after three years of filing the suit.
4. The respondent no.1 was intending to change the nature of the suit. Originally it was merely a suit for perpetual injunction which by way of amendment, now he wants to convert as a suit for declaration in respect of the recitals in the sale deed and also intending to add a party.

5. He would further submit that if at all the respondent no.1 is intending to rectify the instrument, he can do so in an appropriate proceeding. He is unnecessarily wrecking up issues which are not essential for the suit as it was instituted for its just decision.

6. I have carefully perused the application for amendment moved by respondent no.1, the say filed by the petitioner and the order.

7. Even in the say filed by the petitioner he could not point out as to which is the proposed amendment which has the effect of drastically changing the nature of the suit. Merely because the suit for injunction is now being converted into a suit for larger relief of declaration and even mandatory injunction, that cannot be the circumstance to refuse amendment to be carried out.

8. As far as the delay is concerned, admittedly, even according to the learned advocate for the petitioner, the evidence is still to begin. If such is the state of affairs, it cannot be said that by passage of time the amendment could have been refused on the ground of delay.

9. The respondent no.1, giving specific description of the suit property, stated to have been purchased by him, has sought perpetual injunction. By way of proposed amendment he is now seeking to add rectify an error, which according to him had occasioned in describing the property in the sale deed. Even he is seeking to rectify the instrument.

10. It is trite that the entitlement of a party to the relief sought to be added is not the factor that can be gone into while deciding the application for amendment.
11. I find no error or illegality in the order passed by the trial court.
12. Writ petition is dismissed.

(MANGESH S. PATIL, J.)

Tandale/-