

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6833 OF 2014

Mandabai w/o. Santosh Mangate,
 Age 37 years, Occu. Agri.,
 R/o. Dahegaon, Taluka Kannad,
 District Aurangabad

.. Petitioner
 (Original defendant no.3)

Versus

1. Ashok s/o Pandurang Kakulte,
 Age 45 years, Occu. Agri.,
 R/o. Dahegaon, Taluka Kannad,
 District Aurangabad. (Original plaintiff)
2. Daulat s/o Rangnath Kakulte,
 Age 54 years, Occu. Agri.,
 R/o. Dahegaon, Taluka Kannad,
 District Aurangabad. (Original defendant no.1)
3. Macchindra s/o Rangnath Kakulte,
 Age 47 years, Occu. Agri.,
 R/o. Dahegaon, Taluka Kannad,
 District Aurangabad. (Original defendant no.2)
4. Subhash s/o Pandurang Kakulte,
 Age 59 years, Occu. Agri.,
 R/o. Dahegaon, Taluka Kannad,
 District Aurangabad. (Original defendant no.4)
5. Eknath s/o Mukunda Bhalerao,
 Age 42 years, Occu. Agri.,
 R/o. Sawangi, Tal.and Dist. Aurangabad. .. Respondents

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Mr. J. V. Deshpande, Advocate for Petitioner
 Mr. P. P. Patni, Advocate holding for Mr. P. F. Patni, Advocate for
 Respondent no.1
 Mr. S. S. Londhe, Advocate for Respondent no. 2 and 3
 Mr. D. B. Gaikwad, Advocate for Respondent no. 4

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 10-01-2022

JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Advocates for the parties.

2. This petition is directed against order passed by learned Civil Judge, Junior Division, Kannad, District Aurangabad, below Exhibit-48 dated 05.07.2014, in Regular Civil Suit No. 31 of 2010, by which, the application filed by respondent no. 1 - plaintiff seeking amendment of the plaint came to be allowed.

3. Heard rival submissions of learned Advocates for the parties.

4. RCS No. 31 of 2010 is filed by respondent no. 1 - plaintiff seeking cancellation of sale deed executed in favour of petitioner-defendant no. 3 by defendants no. 1 and 2 and relief under Section 22 of the Hindu Succession Act, 1956, claiming that the plaintiff has preemptory right to purchase the suit land. Further relief that sale deed be executed in favour of plaintiff by defendants no. 1 and 2, is also claimed.

5. During pendency of the suit, by first amendment application (Exhibit-21), the plaintiff amended the suit by adding averments that there was agreement of sale (*Issar-pavati*) dated 27.02.2009

executed in favour of plaintiff by defendants no.1 and 2. The said amendment came to be allowed, and accordingly, the plaintiff has amended the suit.

. Thereafter, application (Exhibit-48) was filed by plaintiff, under Order VI, Rule 17 of the Code of Civil Procedure, 1908, seeking further amendment in respect of execution of sale deed in favour of the plaintiff as well as seeking cancellation of sale deed and deletion of paragraphs no. 4 and 5 of the plaint. Further amendment is sought in respect of court-fee stamp. The said application was allowed by the trial Court. The petitioner-defendant no.3 is aggrieved by this order.

6. It is clear from the impugned order that the proposed amendment does not change the nature of the suit. The trial Court has observed that the same will be helpful to decide the real question in controversy between the parties and all the issues at one time. It is settled legal position that merits of the application under Order VI, Rule 17 of the CPC, cannot be decided at this stage.

7. The defendants are always at liberty to contest the amended portion on merits by filing additional written statement. Point of limitation as well as merits of amendment are always open to be contested on merit by the defendants. In that view of the matter, there is no merit in the writ petition.

8. Writ petition is, therefore, dismissed. Rule is discharged.

No costs.

9. *Interim* relief is vacated.

(NITIN B. SURYAWANSHI)
JUDGE

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