

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14101 OF 2021

DHANAPPA HAVAPPA DHARNE DIED THROUGH LRS SHRIDEVI
RAVINDRA SHETTY
VERSUS
BASWESHWAR DEVASTHAN SANSTHA THROUGH IT'S PRESIDENT
BASAVRAJ MAILARI KARBHARI ANOTHER

Mr.A.S.Kulkarni, Advocate for the petitioner.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 18, 2022

PER COURT :

1. Heard the learned Advocate for the petitioner. The petitioner is aggrieved by an order passed below Exh.71 in RCS No.27/2015, which is a suit instituted by the plaintiff themselves seeking a declaration that they are the owners of the suit property situated at village Jewali, Tal.Lohara, Dist.Osmabad.

The plaintiff since antiquity claimed to be the owners of temple of Lord Basweshwar and the claim is to the effect that it is their private family temple. The respondent No.1 however obtained registration of the said temple as a Public Trust, but this was without consent of the family head Dhanappa, the predecessor of the plaintiffs. It is admitted

that some portion of the suit property was registered as a trust property in the year 1974 and this portion of the suit property was mutated in the name of the Trust by the Basweshwar Devasthan Sansthan but after the demise of their predecessor, when the plaintiffs became aware of the "alleged mis deeds", they filed a suit for declaration of ownership and recovery of possession.

2. Originally, the suit had 3 defendants; the first defendant being the Basweshwar Devasthan Sansthan and defendant Nos. 2 and 3 being the Charity Commissioner and the Assistant Charity Commissioner, Osmanabad. It is pertinent to note that the suit proceeded ex-parte against them. On 15/07/2016, the following parties were added as defendants in the suit as under :-

4. *Chief Executive Officer,
Zilla Parishad, Osmanabad,
R/o Osmanabad, Tq. and Dist. Osmanabad*
5. *Gramsevak, Gram Panchayat Karyalay,
Jewali, Tal.Lohara, Dist.Osmanabad,*
6. *Assistant Engineer,
BSNL Office, Jewali,
Dist.Osmanabad.*

The issues came to be settled in the said suit on 19/06/2019 and the burden was cast upon the plaintiffs to prove that the suit property is owned by them as an ancestral property and whether they are entitled

for declaration as to its ownership or in the alternative, its possession. The plaintiffs/petitioners all the while, did not raise any grievance or effected any pleading in the suit qua respondent Nos. 4, 5 and 6. Only after the issues were settled, they filed an application below Exh.71 for effecting an amendment in the plaint and certain allegations were sought to be introduced in the plaint against defendant Nos. 4 to 6 and the paragraph No.12A which was sought to be inserted, pleaded that the defendant Nos. 4 to 6 committed illegal activities and obtained possession towards the Western side of the suit property illegally and unauthorizedly and they are in possession of the same, which should be made over to the plaintiffs by defendant Nos. 4 to 6.

This application was resisted by defendant Nos. 4 and 5 by filing their say.

The submission that the amendment would alter the nature of the suit was not accepted by the learned Judge while he decided the application, but his reasoning is contained in paragraph No.6 of the impugned order where he record that the present application for amendment is filed on 16/10/2019 and the plaintiffs have incorporated defendant Nos. 4 to 6 by way of amendment on 15/07/2016 and even the interim relief sought by the plaintiffs is rejected on merits and the

order being upheld in the Misc.Civil appeal, the plaintiffs are expected to have knowledge of the alleged deeds of the defendants and that is why they were added as defendants, but there is no pleading to that effect that they have encroached upon some portion of the suit property. The impugned order therefore record that the proposed amendment though do not change the nature of the suit, the plaintiffs cannot be permitted to seek the relief by repeatedly filing applications and correcting the pleadings at a subsequent stage though they had knowledge of this act when the defendant No.4 to 6 were impleaded in the suit on 15/07/2016. The amendment moved after a gap of 3 years when the suit is an old one, was declined on the said ground by recording that the plaintiffs cannot be permitted to reiterate an assertion which they have waived earlier. The application is, therefore, rejected on 10/03/2021.

3. On perusal of the nature of the proceedings, when the plaintiffs claimed to be the owners of the suit property and the pleadings are to the effect that they are also in possession of the suit property and the possession of the plaintiffs was being obstructed by the defendants and even their title was denied, the suit was filed against defendant No.1.

The defendant Nos. 4 to 6 came to be added later on without any specific pleading about any attempt of encroachment by them and hence after 3 years, this pleading in the form of an allegation cannot be introduced by way of an amendment when the suit has already advanced. It, therefore, cannot be said that the learned Judge has erred in declining the application for amendment. Necessarily, upholding the same, the writ petition is dismissed.

(BHARATI H. DANGRE, J.)