

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.10776 OF 2022**

SHAIKH PASHAMIYA SHAIKH UMAR AND OTHERS
VERSUS
SOFIYABEE SHAIKH SANDU AND OTHERS

...
Mr. K. F. Shingare, Advocate for the Petitioners.
Mr. R. R. Imale, Advocate for Respondent Nos.1 to 7.
...

**CORAM : SANDEEP V. MARNE, J.
DATED : 23rd NOVEMBER, 2022.**

PER COURT:-

1. By this petition petitioners assail the order dated 05.08.2022 passed by Joint Civil Judge, Junior Division (Court No.7), Aurangabad rejecting plaintiffs' application for amendment under Order 6 Rule 17 and for impleadment of additional defendants under Order 1 Rule 10 of the Code of Civil Procedure. The suit is filed for injunction simplicitor seeking to restrain defendants from interfering with the possession of plaintiffs over land bearing Gut No.264. By way of application filed at Exhibit-33, plaintiffs/petitioners sought to delete defendant no.7 without citing any particular reasons. They also sought to add Executive Engineer, Public Works Department as defendant no.8. They also sought to incorporate paragraph 7-A in the plaint which reads thus:

“The sale deeds bearing No.714, 713, 2091, 3509 in favour of defendants No.1 to 6 are appears to have been executed in respect of land Gut No.266, however the land Gut No.266 is on northern side of the road and not on the southern side of the road and Nala, considering the boundaries mentioned in the respective sale deeds, the said sale deeds are required to be declared as illegal, null and void. Further the plaintiffs submit that the above referred sale deeds are not executed by

the plaintiffs and as such no court fees is required to be paid by the plaintiffs. The defendant No.8 is the Government Authority, the defendants claims the property abutting to the road and Nala belong to the Government. The said road is being supervised and controlled by defendant no.8.”

2. They also sought to incorporate additional prayer Clause C-I in the plaint as under:

“A decree for declaration may be passed in favour of the plaintiffs and against the defendants and the sale deeds No.714, 713, 2091, 3509 in favour of the defendants No.1 to 6 be declared as illegal, null and void.”

3. Perusal of the order passed by the Trial Court would indicate that, it proceeded to consider the prayer only for impleadment of additional defendant no.8. No findings are recorded with regard to deletion of defendant no.7 and incorporation of paragraph 7-A and prayer Clause C-I in the plaint. Though this could have been a fit ground to remand the matter for reconsideration of application filed by plaintiffs/petitioners for the amendment and impleadment, after having heard the learned counsel for petitioners/plaintiffs extensively, I am of the view that the amendment proposed and impleadment sought is totally baseless.

4. Admittedly, there is a Nala running between lands at Gut No.264 of petitioners and land at Gut No.266 of defendants. The petitioners/plaintiffs claim that in addition to Nala there is also a State Highway between Gut Nos.264 and 266. In the suit as originally filed, the relief of injunction was sought to restrain defendants (owners of Gut No.266) from interfering in possession of plaintiffs' land at Gut No.264. Firstly, it is incomprehensible as to how defendants could interfere in possession of plaintiffs' land when admittedly a Nala (and additionally a State Highway

according to petitioners/plaintiffs) run between the two lands. Be that as it may. Now, plaintiffs desire to add Executive Engineer of Public Works Department as defendant no.8 only because defendants in their written statement raised objection about non-joinder of necessary parties. Perusal of the contents of paragraph 7-A and prayer Clause C-I sought to be incorporated in the plaint indicates that plaintiffs now want to challenge the sale deeds executed in favour of defendants in respect of Gut No.266. It is incomprehensible as to how the Executive Engineer of Public Works Department would be a necessary party for challenging to those sale deeds. Therefore, impleadment of proposed defendant no.8 sought for by petitioners/plaintiffs was not tenable.

5. Coming to the incorporation of prayer Clause C-I in the plaint petitioners/plaintiffs have failed to even indicate the dates on which four sale deeds were executed. The said four sale deeds bearing Nos.714, 713, 2091, 3509 have been executed on 07.02.2001, 30.01.2003, 20.03.2009, 24.06.2004 respectively. The said sale deeds are sought to be questioned only with relation to the boundaries of the land indicated therein. The amendment sought is thus hopelessly barred by limitation. Useful reference can be made in this regard to the Judgment of the Supreme Court in **South Konkan Distilleries v. Prabhakar Gajanan Naik**, (2008) 14 SCC 632, in which it is held as under:

14. From the above, therefore, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the

power of the court to order it, if that is required in the interest of justice.

6. The proposed amendment, in my view, would also introduce a new case as the suit originally filed was restricted to the prayer for injunction alone. In my view, therefore, no purpose would be served in remanding the matter for reconsideration of the application filed by petitioners/plaintiffs.

7. The petition is devoid of merits and the same is dismissed without any orders as to cost. Needless to state that, the Trial Court shall not be influenced by observations made in this order while deciding the suit, which shall be decided on its own merits.

(SANDEEP V. MARNE)
JUDGE