

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 WRIT PETITION NO.13044 OF 2022

ANILKUMAR KACHRULALJI ABAD AND OTHERS
VERSUS
SURAJBAI KACHRULALJI ABAD AND OTHERS

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Advocate for Petitioners : Mr S.S. Wagh
Advocate for Respondent Nos. 2 and 3 : Mr P.R. Katneshwarkar &
Mr Rahil R. Kazi
Advocate for Respondent No. 4 : Mr S.C. Arora

CORAM : SANDEEP V. MARNE, J.
DATE : 20th DECEMBER, 2022

PER COURT :

1. By this petition, petitioners challenge order dated 03.12.2022 passed by the District Judge-3, Jalna rejecting petitioners-plaintiffs' application for amendment of the plaint during pendency of appeal.

2. The suit has been filed by the plaintiffs challenging the compromise deed executed between defendant No.1 (mother) and defendant No. 2 (sister). The plaintiffs have also sought declaration of ownership in respect of the land bearing survey No. 554 admeasuring 11H49R. The suit came to be dismissed on 16.12.2019. The petitioners have filed Regular Civil Appeal No.11/2020 before the District Judge challenging the order of the trial court. In pending appeal, application for amendment came to be filed on 07.11.2022 on the basis of occurrence of an event of 09.04.2021 when the defendant No.1 allegedly executed a gift deed in respect of the suit property in favour of the plaintiffs/petitioners. It was claimed in the application for amendment that since the suit is for declaration of title, the

factum of acquisition of title through gift deed dated 09.04.2021 is required to be brought on record. The District Court has proceeded to reject the application for amendment of the plaint by order dated 03.12.2022.

3. Before I advert to the merits of the application for amendment, the conduct of petitioners is required to be taken into consideration. The alleged gift deed is executed on 09.04.2021. Petitioners did not immediately move an application for amendment to bring the averments relating to the gift deed on record by amendment in the plaint. They were prosecuting Writ Petition No. 6263/2021 before this Court challenging the rejection of temporary injunction order by the District Court. This Court on 22.02.2022 directed the District Judge to dispose of the R.C.A. No. 11/2020 within a period of one month. While suffering the order dated 22.02.2022, petitioners did not inform this court that they were armed with the alleged gift deed 09.04.2021 or that they intended to file an application for amendment of the plaint. Since the appeal could not be taken up for hearing and decided within one month as directed by this Court (possibly on account of non-co-operation on the part of petitioners, who were awaiting some clarification with regard to the deletion of name of defendant No.1), this Court was required to extend the period for decision of appeal by three months by order dated 30th March, 2022. On account of this time bound schedule decided by this court, the District Judge proceeded to hear the appeal on 13.04.2022. However, the advocate appearing for petitioners did not argue the appeal again on the pretext of pendency of clarification with regard to deletion of name of defendant No.1. The District Court was left with no option but to dismiss the appeal

on account of failure of the advocate of petitioners to argue the same dismissing the appeal on 13.04.2022. At the time when the appellate Court was urging the advocate for petitioners to argue the appeal, it was never disclosed to the District Court that a gift deed has been executed in favour of petitioner on 09.04.2021 and they intended to file an application for amendment.

4. Petitioners filed an application for restoration of the appeal. In that application again, the intention to file an application for amendment was not disclosed. The District Court allowed the application for restoration by its order dated 07.10.2022 by imposing costs. In the operative portion of the order dated 07.10.2022, the District Judge specifically directed both the parties to co-operate with the Court for deciding the appeal on merits within a period of one month without seeking any adjournment. Thus, the appeal was to be decided on or before 07.11.2022. Petitioners waiting till 07.11.2022, which was the late day for decision of appeal and filed application for amendment of plaint.

5. The above conduct on the part of petitioners speaks volumes about the intention to delay decision of the appeal. The alleged gift deed is executed on 09.04.2021 and the same was sought to be disclosed for the first time before the appellate court on 07.11.2022. In several proceedings that took place in the meantime before the District Judge as well as before this Court, execution of such gift deed or an intention to file application for amendment was never disclosed. While, the learned counsel for petitioners makes a lame attempt to justify the delay by

contending that the application for amendment was filed immediately after re-registration of the appeal, the same would not absolve petitioners in respect of their conduct in not taking steps in moving an application for amendment till the suit was dismissed on 13.04.2022 and more importantly, in not disclosing the intention of filing application for amendment when this Court directed to decide within one month on 22.02.2022. I have therefore no hesitation in holding that this Court as well District Court have been taken for a ride by petitioners by aforesaid conduct.

6. Coming to the merits of the application for amendment, it is seen that the amendment is premised on execution of the gift deed dated 09.04.2021 by defendant No.1 (mother) in favour of petitioners. In the suit, one of the prayers made is for seeking declaration of title. The declaration of title is sought essentially by setting up a challenge to the compromise decree executed between the defendant Nos. 1 and 2. In the event petitioners are successful in getting compromise decree is set aside, the mother would automatically regain ownership in respect of the land of which compromise was executed in favour of the defendant No.2.

7. On the other hand, if the plaintiffs fail in their challenge to the compromise deed, the ownership of defendant No.2 based on such compromise deed would be sustained. Thus, the key to entire dispute is with regard to the validity of the compromise deed executed between the defendant Nos. 1 and 2. What is executed during pendency of the appeal is gift deed by mother in favour of petitioners on a presumption that the

compromise deed is either not in existence or that the same is bound to be set aside by the Court. In such a situation, the transaction of gift deed in the nature of *lis pendens*, which would not have any direct bearing on the main issue of validity of compromise decree involved in the suit.

8. As observed earlier, in the event of petitioners succeeding in their prayer for setting aside compromise decree, the gift deed would automatically take effect. Also of relevance is the fact that the defendants have conceded to the request for production of the gift deed by way of additional evidence before the District Judge and I am sure, the District Judge would take note of the same while deciding the appeal. In these circumstances and particularly considering the stage at which the appeal is pending, the application for amendment was clearly unwarranted.

9. In support of his contention that amendment is required to be allowed to prevent multiplicity of litigations, the learned counsel for petitioners relies on following judgments:

- (i) Anil Kumar Kachrulalji Abad and Ors. Vs. Surjabai Ikachrulalji Abad and others Writ Petition No. 6273 of 2021 decided on 22.02.2022.
- (ii) Nichhalbhai Vallabhai and others Vs. Jaswantilal Zinabhai and others reported in AIR 1966 SC 997
- (iii) Surender Kumar Sharma vs. Makhan Singh reported in AIR 2009 SC (Supp) 2671
- (iv) Shuvam Construction Pvt. Ltd. Vs. Smt. Babita Mohanty and Anr. reported in AIR 2010 ORISSA 65

10. No doubt, in the Judgments relied upon by petitioners, the Supreme Court and this court have reiterated the necessity of allowing amendment

to avoid multiplicity of suits. In my view, the Judgments are of little assistance to petitioners as rejection of amendment would not result in multiplicity of proceedings. As observed above, in the event of petitioners being successful in setting up a challenge to the compromise deed, the mother would regain ownership in respect of the land in question and the gift deed would automatically take effect. There is no need for petitioners to file a separate suit in that regard.

11. I am therefore of the view that the District Judge has rightly rejected the application for amendment. The writ petition is devoid of merits. The same is dismissed without any orders as to costs.

[SANDEEP V. MARNE, J.]

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