

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.966 OF 2019

ARVIND PUNDLIK DHAMNE AND ANOTHER
VERSUS
MATHURABAI DWARKAPRASAD DUBE AND OTHERS

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Advocate for Petitioners : Mr. N.Y. Kingaonkar
Advocate for Respondent No. 3 to 5: Mr. A J Bhat

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st JULY, 2022

ORDER :

1. The petitioners are aggrieved by the order passed by the learned 7th Joint Civil Judge, Senior Division, Aurangabd, below Exhibit-60 in Special Civil Suit No. 19/2012.

2. The petitioners/original plaintiffs have filed application under Order VI Rule 17 of Code of Civil Procedure seeking amendment in the plaint contending that recently they have received information that Vishnu Gaikwad and Kailash Jadhav are shown to be purchaser of the suit land by mutation entry No. 2531 and they have purchased the suit property on 16.12.2011, said transaction is illegal. Similarly, they have also claimed that one Sunil Belge has also purchased some portion of suit land by sale deed dated 16.12.2011 and his name is mutated in the revenue record. They therefore, by proposed

amendment challenged the said sale deeds and mutation entries.

3. Amendment application was resisted by the respondents and the Trial Court has rejected the same holding that in the written statement there is a reference of sale deed dated 16.12.2011. Thereafter, issues were framed on 24.06.2015 and since then matter is pending for evidence of plaintiffs. Application seeking amendment is filed on 01.04.2018 and the plaintiffs failed to explain, as to why they could not file amendment application at earlier point of time. The certified copies of sale deeds sought to be challenged by way of amendment, are filed on record by the plaintiffs along with amendment application shows that they were taken out or received in the year 2015, this also shows that the plaintiffs were having knowledge of sale deeds. On this ground the Trial Court has rejected the application.

4. Having heard the learned advocate for the parties and after perusal of documents placed on record and citations relied on by both the parties, this Court is of the view that the impugned order cannot be sustained and if the amendment application is not allowed, there would be multiplicity of

proceedings. In the result, following order:-

ORDER

- I) The writ petition is allowed.
- II) The impugned order dated 09.10.2018, passed by 7th Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-60, in Special Civil Suit No. 19/2012, is hereby quashed and set aside.
- III) Application Exhibit-60 is allowed and the point of limitation is kept open.
- IV) Taking into consideration the fact that the suit of the year 2012, the amendment shall be carried out by the petitioner within a period of six weeks from today.
- V) Respondents shall file additional written statement to the amendment within a period of two weeks thereafter.
- VI) Trial of the suit is expedited.
- VII) Since the petitioners have belatedly filed amendment application, the petitioners are directed to pay cost of Rs. 10,000/- to the respondents in the Trial Court.

[NITIN B. SURYAWANSHI, J.]