

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 5991 OF 2021

Smt. Shakuntala Suresh alias Babaso Prabhavale & Ors. ...Petitioners
vs.

Shri Anandrao Lahu Patil ...Respondent

Mr.Suresh M. Kamble for Petitioners.

CORAM : ROHIT B. DEO, J.

DATED : 18 JULY 2022

P.C. :

1. Petitioners are the defendants in Regular Civil Suit 601/2016 which is instituted by the plaintiff – Respondent herein for specific performance of agreement of sale dated 20.9.1999 as confirmed in agreement for sale dated 16.5.2001 executed by deceased Mr.Suresh Prabhavale who is the predecessor of the defendants.

2. Defendants filed their written statement on 27.10.2016.

3. After the plaintiff filed on record affidavit in lieu of examination-in-chief and the suit was fixed for cross-examination of the plaintiff, the defendants preferred an application dated 7.3.2019 seeking permission to amend the written statement.

4. The learned 4th Joint Civil Judge, Junior Division, Kolhapur (trial Judge) was pleased to reject the application under Order 6 Rule 17 of the Code of Civil Procedure (Code) vide order dated 30.1.2020, which is

impugned herein.

5. The learned trial Judge noted that the issues were framed on 11.1.2017 and additional issues were framed on 17.4.2017. Evidence of two witnesses of the plaintiff has come on record. The learned trial Judge then found that in the entire application no attempt is made to justify the delay caused in invoking the provisions of Order 6 Rule 17 of the Code. The learned trial Judge noted that the amendment which is proposed seeks to bring on record events which occurred much prior to the institution of the suit. The learned trial Judge held that test of due diligence is not satisfied and on such premise, rejected the application under Order 6 Rule 17 of the Code.

6. Perusal of the application shows certain events which according to the defendants have occurred between 1996 and 2000 are proposed to be incorporated in the written statement. The proposed amendment seeks to incorporate pleadings which bring on record that between 1996 and 2000 the plaintiff executed certain sale deeds *qua* certain properties, on the basis of which Power of Attorney executed by Mr.Suresh Prabhavale.

7. The application seeking amendment of the written statement is undoubtedly preferred after the commencement of the trial. Proviso to Order 6 Rule 17 of the Code is triggered. The defendants were obligated to satisfy that test of due diligence. However, there is no averment whatsoever in the application under Order 6 Rule 17 of the Code which attempts to demonstrate that despite exercising due diligence, the defendants were prevented from bringing on record the averments pertaining to the

transactions which allegedly occurred from 1996 to 2000. I am in complete agreement with the view taken by the learned trial Judge, that in view of the ordinate delay and the failure of the defendants to satisfy the test of due diligence, the amendment cannot be permitted.

8. The other aspect is that the defendants have not bothered to explain the relevance of the transactions which the plaintiff allegedly entered into from 1996 to 2000. The submission across the bar is that the sale deeds during the said period pertain to portions of the property owned by Mr.Suresh Prabhavale and such conduct is relevant notwithstanding that the transactions do not pertain to the suit property.

9. In the absence of any factual foundation, it is not possible to consider the submission that the proposed amendment is of any relevance to the issue involved.

10. The substratum of the plaint is that Mr.Suresh Prabhavale executed two agreements in favour of the plaintiff with reference to land admeasuring 319.19 sq.mtrs. which is a portion of entire land admeasuring assigned Survey 790/35 situated in Taluka Karvir, Kolhapur. It is pleaded in the written statement that Mr.Suresh Prabhavale did not enter into the agreement dated 20.8.1999, with the plaintiff. The defendants refused to acknowledge that the signature on the document dated 20.8.1999 is that of Mr.Suresh Prabhavale. The defendants then contended that they have not executed the confirmatory agreement dated 16.5.2001 in favour of the plaintiff.

11. The substratum of the rival pleadings would suggest that the

issues which arise touch the authenticity of the suit agreements. However, the allegation that certain other properties have been sold from 1996 to 2000, by the plaintiff on the basis of Power of Attorney, if permitted to be incorporated in the pleadings, after the commencement of trial and 22 years after the last transaction in the year 2000 will not only change the entire structure of the defence, the persons who have purchased portions of the property vide sale deeds executed between 1996 and 2000 may be unnecessarily dragged in the lis which essentially pertains to the suit property which is land admeasuring 319.19 sq.mtrs.

12. The learned Counsel for the Petitioner has pressed in service the decision of the Apex Court in **Baldev Singh and others vs. Manohar Singh and another** ¹ and the decision of a learned Single Judge of this Court in **Mr.Teotonio Faustino Vas and another vs. Smt.Ana Maria Rodrigues and Ors.**². In **Baldev Singh and others**, the Apex Court observed that wide power and unfettered discretion is conferred on the court to allow amendment of pleadings. It is further observed that the trial has not yet commenced. The Apex Court noted in paragraph 17 of the decision that the parties have not filed their documentary evidence in the suit. With respect, the observations in **Baldev Singh and others** will have to be understood in the context of the factual matrix obtaining. In **Mr.Teotonio Faustino Vas and another**, the proviso to Order 6 Rule 17 of the Code did not fall for consideration.

13. In any event, since the test of due diligence is not satisfied, I am not inclined to interfere with the order impugned, in exercise of writ jurisdiction.

¹ (2006) 6 SCC 498

² 2018(6) ALLMR 582

14. The writ petition is dismissed.
15. The Trial court shall expedite the hearing of the suit and shall dispose of the same finally and in any event within the next nine months.

(ROHIT B. DEO, J.)