

S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.11542 OF 2016**

Naga Kalu Bhopi (Since deceased through legal
heirs) Hari Naga Bhopi and Ors.

.. Petitioners

Versus

Ramdas Maruti Bhopi and Ors.

.. Respondent

.....

- Mr. Rohit D. Joshi for Petitioners
- None for Respondent

.....

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 06, 2022.

P.C.:

1. The Petitioners have challenged the Order dated 03.12.2014 passed below Exhibit-9 in application under Order 1 Rule 10 read with Order 6 Rule 17 of the Code of Civil Procedure, 1908 seeking amendment of the plaint.

2. Admittedly, the suit has been decreed after a full fledged trial against the Petitioners. I have perused the decree.

3. Mr. Joshi, learned Advocate for Petitioners submitted that after perusing the copy of sale deed it was noticed that the third party had purchased the suit property on the basis of a bogus Power of Attorney of Naga Kalu Bhopi. He submitted that the Power of Attorney did not bear his signature and was not properly stamped.

4. Perusal of the record reveals that objection to the sale deed

is raised at a much belated stage by the Petitioners. However perusal of the Power of Attorney reveals that the right hand thumb impression of Naga Kalu Bhopi was imprinted on the Power of Attorney, but the same is not accepted by the Petitioners to be his thumb impression. That apart, the learned Appellate Court has come to the categorical conclusion that it was also to the knowledge of the Petitioners that the name of Gautam Keshavdev Nemani was entered into revenue record pertaining to the suit property and in that respect as far back in 2009, they filed a complaint being Case No. 106 of 2009 before the Tahasildar, Panvel which came to be decided vide order dated 26.06.2010.

5. In that view of the matter, despite having knowledge of the said fact, Petitioners did not seek to amend the plaint until the trial was over. The learned Appellate Court has also noted that Petitioners during the trial had complete knowledge of the fact that the suit property was sold by Naga Kalu Bhopi to Gautam Keshavdev Nemani which fact has been admitted in their cross examination during the trial. Petitioners have also admitted the fact that Gautam Keshavdev Nemani's name is appearing in the revenue records of the suit property in their cross examination. Hence the Application of the Petitioners under Exhibit-9 is not sustainable at this stage.

6. Therefore rejection of the application filed under Exhibit-9 is completely justified. I do not find any reason to interfere with the

order passed by the learned Appellate Court. The said order is a well reasoned order.

7. Petition dismissed.

[MILIND N. JADHAV, J.]

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