

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

WRIT PETITION NO.11752 OF 2017

Ramesh Ratanji Patel and Anr.

..Petitioners

Versus

Farook Latif Sayyed

Since deceased through legal heirs

Shahnaj Farook Sayyed and Ors.

..Respondents

Mr. Kalpesh U. Patil, for the Petitioners.

Mr. Rahul D. Oak, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 28th FEBRUARY, 2022

PC.

1. In a suit for injunction, petitioners moved an application Exh.102 seeking declaration of ownership based on sale-deeds of 1969-70. Said sale-deeds, I am informed were exhibited in first round of litigation. The decree was set aside in appeal by consent and the suit came to be restored to the file. Prayer for amendment in relation to claim of ownership is rejected vide impugned order dated 27th July, 2017 passed below Exh.102.

2. Counsel for the petitioners submits that the claim of the plaintiffs for amendment is justified even at belated stage. It is always open for the petitioners to file fresh suit but for avoiding injustice, repetition of litigation, the Court should have granted the

amendment.

3. Learned counsel for the respondents/defendants supported the impugned order on the ground that Court below was justified in appreciating the fact that trial has proceeded at advanced stage and by way of afterthought the amendment is moved.

4. I have considered aforesaid submissions.

5. It is not in dispute that the suit *inter se* between the parties is for simplicitor injunction, in which the petitioners now sought declaration of ownership of property. Such prayer for declaration by way of amendment is based on the sale-deeds of 1969-70 which could be evidenced *inter se* between the parties from the proceedings in first round of litigation i.e. prior to the order for remand passed by the Appellate Court.

6. In the aforesaid background, if we consider the nature of relief sought by way of amendment, the parties to the suit remains the same, the property also remains the same, however, the only claim for declaration of ownership is sought to be added based on the title document. It is not the case of the respondents that claim by way of amendment is time barred.

7. No doubt that the petitioners have every right to file an

independent suit for same, however, considering the law laid down by the Hon'ble Apex Court in the matter of **Hardeo Rai Vs. Sakuntla Devi and Ors.** reported in ***(2008) 7 SCC 46***, it will be appropriate, in my opinion, to grant prayer for amendment, as same will result into avoiding injustice, so also repetition of the litigation between same parties in relation to very same property. That being so, the order impugned dated 27th July, 2017 passed by 8th Joint Civil Judge Junior Division, Karad in RCS No.211 of 2005 is hereby quashed and set aside. The said application Exh.102 stands allowed subject to payment of cost of Rs.15,000/- to be deposited in the Court below to which the respondents/defendants will be entitled to withdraw. Before carrying out amendment within two weeks, the deposit of cost shall be condition precedent.

8. The petition stands allowed in the above terms.

[NITIN W. SAMBRE, J.]