

BDP-SPS-TAC

BHARAT
DASHARATH
PANDIT

Digitally signed
by BHARAT
DASHARATH
PANDIT
Date: 2022.03.21
13:03:14 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8995 OF 2021**

Shri. Nathu Bhagwan Lokhande & Anr. ...Petitioners

Versus

Smt. Thakubai Krishna Pingale & Ors. ...Respondents

Mr. Prajakt M. Arjunwadkar for the Petitioners.

Mr. Mohan N. Dhamal for the Respondent Nos. 1(A), 12 to 15, 17 & 20.

CORAM: NITIN W. SAMBRE, J.

DATE: MARCH 16, 2022

P.C.:-

1] Based on title, respondent initiated suit for possession and injunction in which Petitioners/Defendants set up defence, thereby denying such title. A specific plea is raised that title to the suit property is vested in Petitioners/Defendants by virtue of Sale Deed.

2] After trial in the suit commenced, prayer of the Petitioners for amendment so as to amplify the defence of vesting of title in them came to be rejected vide order dated 31st July 2019 passed below Exhibit-92 and dated 17th October, 2019 passed below Exhibit-98.

3] Counsel for Respondents would urge that amendment would change the nature of defence already raised by the Petitioners and there is absence of due diligence. He relied on judgment of the Apex Court in the matter of *M. Revanna V/s. Anjanamma (Dead) By LRs and Ors. reported AIR 2019 S.C. 940*. He would urge that amendment which is sought at belated stage, that too without any *bona fide* explanation, needs to be rejected.

4] Considered submissions.

5] Amendment was moved in the suit which is pending since 2000 and amended provisions of Order 6, Rule 17 as such, will not be applicable to the case in hand. A support can be drawn from the judgment of the Apex Court in the matter of *State Bank of Hyderabad Vs. Town Municipal Council reported in (2007)1 SCC 765*. It appears from the written statement that already there exist pleadings in regard to denial of title of Respondent/Plaintiff and vesting of such title in favour of the Petitioners, which Petitioners intend to amplify by placing on record Sale Deed executed in their favour way back in 1995. As such, amendment does not change the nature of defence and

same ought to have been granted by the Court below. That being so, orders impugned passed below Exhibit-92 dated 31/7/2019 and below Exhibit-98 dated 17/10/2019 are quashed and set aside. Exhibit-92 stands allowed, subject to payment of costs of Rs.10,000/- (Ten Thousand only) to be deposited in the Court below which Respondents will be entitled to withdraw. Costs be deposited within two weeks from today before carrying out the amendment. Needless to clarify that Respondents/Plaintiffs will be at liberty to lead additional evidence by placing on record, additional affidavit of examination-in-chief in the light of aforesaid grant of amendment.

6] Petition is accordingly allowed and disposed of.

(NITIN W. SAMBRE, J.)