

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 916 OF 2022

Mansab Khan s/o Sikandar Khan,
aged about 72 years, Occupation :
Agriculturist, r/o Masod, Amravati,
Tq. and District Amravati.

.... **PETITIONER**

// VERSUS //

1. Abdul Naeem s/o Abdul Matin
Choudhari, r/o Near Masjid
Chaprashipura, Amravati, Tq. and
District Amravati.
2. Salman Khan s/o Bashir Khan, r/o
Near Weekly Bazar, Nandgaon Peth,
Amravati, Tq.and District Amravati.
3. Nitin s/o Sambhaji Hatwar, r/o Near
Weekly Bazar, Nandgaon Peth,
Amravati, Tq.and District Amravati.
4. Bhalchandra s/o Madhukarrao
Malve, r/o Arjun Nagar, Amravati,
Tq.and District Amravati.
5. Yasmin w/o Mohammad Nasir, r/o
New Kumkum Factory, Amravati,
Tq.and District Amravati.
6. Shahnaj w/o Mohammad Nasir, r/o
Near Teacher Colony, Amravati,
Tq.and District Amravati.

.... RESPONDENTS

Shri J.B. Kasat, Advocate for the petitioner.

CORAM : ROHIT B. DEO, J.
DATED : 24.02.2022

ORAL JUDGMENT :

Heard. **RULE.** With Consent, the petition is heard finally.

2. The petitioner is the plaintiff in Special Civil Suit 128 of 2014 which he instituted seeking a declaration that the sale-deed dated 03.07.2012 registered at Serial 4574 in Book 1 on 03.07.2012 at the office of Sub-Registrar, Amravati Rural is null and void and a decree of permanent prohibitory injunction restraining the defendants from taking forcible possession of the land which is in possession of the plaintiff. Further, declaration is sought that the defendants have no right to evict the plaintiff.

3. The plaintiff describes the suit property as agricultural land assigned Survey 49/01 admeasuring 2.78 HR situated at Village Masod, Taluka and District Amravati. The suit property is, according to the plaintiff, part of total field admeasuring 3.73 HR which was initially owned by the father of the plaintiff Mr. Sikandar Khan Anwar Khan. According to the plaintiff, in 1978 Mr. Sikandar Khan sold 2.13 HR land to Mr. Ramesh Chabilal Kashyap and Mrs. Gangabai Ramesh Kashyap vide registered sale-

deed dated 10.04.1978. Mr. Jagdish Reche and Mr. Mahesh Reche had purchased 2.78 HR land from Mr. Sikandar Khan in the year 1994 vide registered sale-deed dated 14.07.1994. The substratum of the rest of the avernments is that in suit instituted by the Kashyap couple, the sale-deed executed by Mr. Sikandar Khan in favour of the Reche brothers, was declared illegal. Reche brothers preferred Regular Civil Appeal 143 of 2001, which was dismissed and the Second Appeal was also dismissed by this Court. The plaintiff claimed that the Reche brothers however sold 1.39 HR land to Janrao Bawankhule in 2002 and 1.39 HR in favour of Satyanarayan Khandelwal, also in 2002 and these purchasers in turn, sold the portion covered by the sale-deeds in favour of others. However, the challenge in the suit is restricted to sale-deed dated 03.07.2012 executed by Ms. Yasmin Bano - defendant 5 in favour of defendants 1 to 4.

4. The plaintiff asserts thereafter considering the area legally or validly transferred by Mr. Sikandar Khan, the plaintiff is in possession of land admeasuring 4 acres out of Survey 49/1 and his possession is being disturbed. The cause of action which is pleaded in paragraph 6 is that the plaintiff recently learnt about the execution of the sale-deed dated 03.07.2012 and since there is continuous attempt to dispossess the plaintiff, the cause of action continuous.

5. The defendants submitted their written statement and the learned Trial Court framed issues. It appears that one of the issues framed is

whether the suit is within the limitation and other relevant issue is whether the plaintiff proves his title and possession over the suit property. Notably, the issues are framed on 12.11.2018. Nearly three years after the framing of the issues, the plaintiff preferred an application invoking the provisions of Order VI Rule 17 of the Code of Civil Procedure seeking a declaration that the plaintiff is the owner, occupant and in possession of 4 acres portion. It is difficult to appreciate why the plaintiff submits that such an amendment is necessary. I already noted *supra*, that the entire suit plaint is predicated on the assertion that the plaintiff is the owner and in possession of land admeasuring 4 acres and an issue is drawn on the basis of the pleadings. The plaintiff has also sought a perpetual injunction. Be that as it may, the learned Trial Judge permitted the plaintiff only to partially amend the plaint to correct certain typographical errors and declined permission to incorporate the prayer clause. The Trial Court noted that the suit was posted for evidence of the plaintiff and since the plaintiff failed to adduce evidence, the suit was posted for passing order in order of dismissal in default. However, at the request of the plaintiff, the suit was again posted for evidence, the plaintiff again failed to adduce evidence and the Court was compelled to post the suit again for passing dismissal in default order and it is at this stage, that the application seeking amendment is moved. The learned Trial Judge has recorded, and rightly so, that the only attempt appears to be to somehow or the other avoid adjudication on merit.

6. I agree in entirety, with the reasons recorded by the Trial Court.

I am satisfied that the application is not *bona fide*. It is more than apparent that the plaintiff is not interested in adducing evidence and he is somehow or the other intending to kill time.

7. I see no reason to interfere. Learned Counsel Mr. Kasat invited my attention to the decision of the Hon'ble Supreme Court in ***Sampath Kumar vs. Ayyakannu and anr. (2002) 7 SCC 559*** which articulates that if the basic structure is not changed and only the nature of relief is sought to be changed, rather than compelling the plaintiff to institute fresh suit, amendment should be ordinarily allowed to avoid multiplicity of litigation. I am afraid the said articulation is not relevant in the context of the factual matrix.

8. The petition is dismissed. The Trial Court is requested to conclude the hearing of the suit property as expeditiously as possible and in any event within the next six months.

9. The Registrar (Judicial) shall bring this order to the notice of the Trial Court.

(ROHIT B. DEO, J.)

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