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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.920 OF 2018

Somnath Bhikchand Dhoot and Others

PETITIONERS

VERSUS

Shridhar Murlidhar Bhete and Others

RESPONDENTS

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Mr. Aditya N. Sikchi, Advocate for the petitioners

Mr. Y. V. Kakade h/f Mr. N. V. Gaware, Advocate for respondents
No.1 to 4

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd JULY, 2023

ORDER :

1. The petitioners are aggrieved by the order dated 5th July, 2017 passed by the learned Civil Judge, Junior Division, Georai, below Exhibit-65 in Regular Civil Suit No. 252 of 2010, thereby allowing application filed by the respondents No.1 to 4 – plaintiffs for amendment of plaint.

2. The suit is filed for partition and separate possession. On 22nd September, 2019, written statement was filed by the petitioners – defendants. Thereafter, on 19th September, 2016, present application (Exhibit-65) is filed, seeking amendment in the plaint and for addition of prayers that sale deeds executed

on 20th May, 1991 and 18th May, 1993, in respect of the suit property, are not binding on the share of the plaintiffs.

3. The application was strongly opposed by the defendants stating that the application is belatedly filed and there is total lack of due diligence on the part of the respondents – plaintiffs. It is contended that the application is filed only with a view to prolong the suit and it is filed after six years, after the written statement is filed. The Trial Court has allowed the applicant. Hence, the present writ petition.

4. Heard learned advocate for the petitioners and the learned advocate for the respondents. Perused the memo of writ petition, documents annexed with the same, the impugned order and the citations relied on by the learned advocate for the petitioners.

5. In the suit filed by the plaintiffs for partition and separate possession, sale deeds executed in respect of some of the properties, are sought to be challenged, by way of the amendment. The Trial Court has rightly come to the conclusion that the trial has not commenced and if the amendment is allowed, it would avoid multiplicity of litigation. It is observed that the amendment is necessary for effectively deciding the

dispute between the parties. The Trial Court has rightly allowed the application in view of settled legal position that amendments are to be liberally allowed.

6. Learned advocate for the petitioners has vehemently urged that the reliefs sought by way of the amendment are beyond limitation and, therefore, the amendment should not have been allowed by the Trial Court. In support of his submissions, he relied on following citations :

- i) *“Shiv Gopal Sah V/s Sita Ram Saraugi and Others” AIR 1007SC1478.*
- ii) *“South Konkan Distilleries and Another V/s Prabhakar Gajanan Naik and Others” (2008) 14 SCC 632*
- iii) *“Revajeetu Builders and Developers V/s Narayanaswamy and Sons and Others” (2009) 10 SCC 84*

7. In ***“Shiv Gopal Sah”*** (*supra*), there was absolutely no explanation in the amendment application for belatedly filing the application. In the present case, explanation is given by the plaintiffs that the plaintiffs are residing in different town and after the receipt of the written statement, they came to know about the sale of some of the houses. Thereafter, necessary documents were sought from the Village Panchayat and those were not given. Thereafter, Extension Officer was approached,

who ultimately gave PTR extracts to the plaintiffs and thereafter they filed the application seeking amendment. On account of this, there was delay in filing the application. Said explanation is plausible and is rightly accepted by the Trial Court. Therefore, this citation would not help the case of the petitioners.

8. In "***South Konkan Distilleries***" (*supra*), it is held that time barred claims should not be allowed by way of amendment. There cannot be any dispute about the said proposition, however, in the present case, as is already observed, the suit is for partition and the sale of the house property is subsequently made known to the plaintiffs and after obtaining necessary documents in that behalf, they have applied for amendment. Hence, this citation also would not be of any use to the petitioners.

9. In "***Revajeetu Builders***" (*supra*), factors to be taken into consideration while dealing with applications for amendment are summarized. Learned advocate for the petitioners relied on clause 6 of paragraph 67 i.e. "*As a general rule, the court should decline amendments, if a fresh suit on the amended claims would be barred by limitation on the date of the application*".

In the case in hand, considering the fact that the suit is for partition, and point of limitation is a mixed question of law and facts, the point of limitation is kept open, which should be decided by the Trial Court at the time of final adjudication of the suit.

10. For the aforesaid reasons, no merit is found in the writ petition. There is no illegality or perversity in the order impugned in the present writ petition. No case is made out by the petitioners to exercise extraordinary writ jurisdiction to cause interference in the impugned order. Writ petition, is therefore, dismissed. Considering the fact that the suit is of the year 2010, hearing is expedited.

[NITIN B. SURYAWANSHI]
JUDGE