

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2967 OF 2023

Sanjay S/o. Vishwambar Wage

.... Petitioner

Versus

1. Subhash S/o. Ambadas Joshi

2. Janardhan S/o. Bhanudas Indapure

.... Respondents

.....

Mr. Devdatt P. Palodkar, Advocate for the Petitioner

Mr. Rahul Joshi, Advocate for Respondent No.1

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th MARCH, 2023

ORDER :

1. By this petition, filed under Articles 226 and 227 of the Constitution, the petitioner takes exception to the order dated 21/12/2022 passed by the learned 6th Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-107 in Special Civil Suit No.137 of 2015, thereby rejecting the application filed by the petitioner/plaintiff under Order XI Rule 17 of the Code of Civil Procedure.

2. The suit is filed for declaration, injunction and for recovery of possession. It is claimed by the petitioner/plaintiff that he is a lawful owner of the suit property, and his purchaser has purchased the suit property from the original

owner Janardhan Bhanudas Indapure by way of notarized sale deed dated 20/01/1993. The petitioner/plaintiff purchased the suit property by way of notarized sale deed dated 15/03/2013. It is the case of the petitioner/plaintiff that defendant No.1 has illegally encroached over the suit property.

3. The suit is resisted by defendant No.1 by filing written statement. Thereafter, after evidence of petitioner/Plaintiff is complete, Defendant No.1 filed his evidence affidavit on 13/01/2020, and at that time, he filed a copy of sale deed executed in his favour on 11/03/1993. The petitioner/plaintiff, therefore, proposed an amendment claiming that the said document is subsequent document, and is not registered before proper authority, and sought a declaration that the sale deed dated 11/03/1993 executed in favour of defendant No.1 is null and void, and not binding on the petitioner/plaintiff.

4. Defendant No.1 opposed the said application by written statement stating that the application is filed to prolong the suit, and the amendment sought by the plaintiff is illegal. He has filed his written statement earlier, wherein he has mentioned that on 11/03/1993, Chhabubai Kothule handed over the possession of the suit property to defendant

No.1 and sale deed in his favour was executed by Chhabubai Kothule in favour of defendant No.1 on 20/01/1993. The plaintiff, therefore, is aware about the said pleadings, and there is absence of due diligence on the part of the plaintiff.

5. Learned advocate for the defendant/respondent No.2 has given no objection in the trial Court, to allow the amendment application

6. The trial Court has rejected the application accepting the contention of defendant No.1 and holding that the plaintiff has not shown due diligence to file application at earlier point of time, and the proposed amendment is not just and necessary for the just decision of the case.

7. Heard the learned advocate for the petitioner and the learned advocate for the respondent No.1. Perused the memo of writ petition, the documents placed on record and the impugned order. This Court is of the opinion that the impugned order is unsustainable for the following reasons.

8. Admittedly, though defendant No.1 has mentioned in his written statement that Chhabubai Kothule executed sale deed in his favour, the same is produced by the defendant No.1 for the first time on 03/02/2020 along with his affidavit

of evidence, which is observed by the trial Court in the impugned order.

9. In the peculiar facts of the present case and taking into consideration the settled legal position that the amendment needs to be allowed liberally, and in the case in hand, since it would avoid multiplicity of the proceedings, this Court is of the opinion that amendment deserves to be allowed in the interest of justice, For absence of due diligence on the part of the plaintiff, defendant No.1 can be compensated.

10. In the result, the writ petition is allowed.

11. The impugned order dated 21/12/2022 passed by 6th Joint Civil Judge, Senior Division below Exhibit-107 in Special Civil Suit No.137 of 2015 is quashed and set aside.

12. Application Exhibit-107 is allowed, subject to the petitioner paying costs of Rs.25,000/- to defendant No.1 in the trial Court.

13. Considering the fact that the suit if filed in the year 2013, and it is re-numbered as Special Civil Suit No.137 of 2015, it is hereby directed that the plaintiff shall carry out the amendment within a period of two weeks from the date of receipt of writ of this order.

14. Defendant No.1 will be at liberty to file additional written statement within two weeks, thereafter.

15. The trial Court shall decide the suit within three months from the receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane