

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3805 OF 2023

Rahibai Dashrath Kadam

Petitioner

Versus

The State Of Maharashtra Through
District Collector And Others

Respondents

Mr. Yogesh Kale, Advocate for the petitioner.

Mr. P.G. Borade, AGP for State.

Mr. Y.R. Shinde h/f. Mr. R.R. Karpe, Advocate for respondent No. 4.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th SEPTEMBER, 2023

ORDER :

1. Leave to correct prayer clause.
2. Petitioner is aggrieved by the order dated 16.02.2023 passed by learned Civil Judge, Senior Division, Ahmednagar, below Exhibit-33 in Regular Civil Suit No. 466/2021.
3. Petitioner/plaintiff filed suit for declaration and injunction. Defendants opposed the suit by filing written statement. After the written statement was filed by defendant No. 4, petitioner moved application Exhibit-33 seeking amendment in the plaint. Said application is rejected. Hence, the present petition.

4. Heard the learned advocate for the petitioner and learned advocate for respondent No. 4. Perused the memo of writ petition, annexures thereto and the impugned order.

5. It appears from the record that in view of the averment made by defendant in the written statement that proposed defendant is residing in the suit property, plaintiff came to know that the part of the suit property was sold in faour of proposed defendant/Respondent No. 7 by deceased defendant No. 4 in the year 1996. Trial Court has rejected the application holding that it is not possible to accept the contention of the plaintiff that mother of defendant No. 4 had executed sale deed in favour of respondent No. 7 and those documents were not seen by the plaintiff. Trial Court has also observed in the impugned order that sale deed of the year 1996 is sought to be challenged by the plaintiff after almost 25 years. It is a matter of record that written statement is filed by the defendant No. 4 on 21.03.2022. According to the plaintiff thereafter after making necessary inquiry she has moved application for amendment on 14.12.2022.

6. In *Kamlesh Gupta vs. Mangat Rai and Another*, 2020 (17) SCC 132, it is held that, “*even though application for*

impleadment and amendment of plaint was filed by plaintiff belatedly, interest of justice demands that application be allowed, to ensure that in eventuality of suit being decreed, the decree would be objected by the person in possession of the property."

7. Considering the above ratio and the facts of the present case, this Court is of the opinion that to avoid multiplicity of proceedings and to decide the dispute between the parties, amendment is necessary. For belatedly filing the amendment application, cost can be imposed on the petitioner. In the result, following order:

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 16.02.2023, passed by learned Civil Judge, Senior Division, Ahmednagar, below Exhibit-33 in Regular Civil Sit No. 466/2021, is hereby quashed and set aside.
- (III) Application Exhibit-33 is allowed, by keeping the point of limitation open.
- (IV) Petitioner to pay cost of Rs. 5,000/- to the defendants in the Trial Court.

[NITIN B. SURYAWANSHI, J.]