

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3125 OF 2015

**TARVINDERSINGH MAHENDRASINGH DHILLON, AURANGABAD
VERSUS
SITARAM EKNATH (AKANT) CHOUDHARI AND OTHERS**

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Advocate for Petitioner : Mr. Anil S. Bajaj
AGP for Respondent No.9 : Mr. P.N. Kutti
Advocates for Respondent No.1 : Mr. S.S. Randive & Mr. G.M. More

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 26th JUNE, 2023

PER COURT :

1. Petitioner is aggrieved by the order dated 07/03/2015, passed by learned 8th Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-268 in Regular Civil Suit No.869/1997, thereby allowing application filed by respondent No.1/original plaintiff under Order 6, Rule 17 of the Code of Civil Procedure.
2. The suit is filed by respondent No.1/plaintiff for perpetual injunction and declaration of ownership over the suit property. Defendants resisted the suit by filing written statement. Thereafter plaintiff filed application for amendment of plaint at Exhibit-135, which after hearing the parties was rejected by order dated 06/07/2005.
3. Thereafter, plaintiff filed application Exhibit-268 for

amendment of plaint, which is allowed by the Trial Court. Petitioner is aggrieved by the same.

4. Heard learned advocate for petitioner, learned advocate for respondent No.1 and learned Additional Government Pleader for respondent No.9 – State. Perused the memo of writ petition, annexures thereto and the impugned order.

5. Learned advocate for petitioner by relying on *C. V. Rajendran and Another Vs. N. M. Muhammed Kunhi, (2002) 7 SCC 447*, states that when the earlier application for amendment filed by plaintiff was rejected, the subsequent application wherein impugned order is passed is barred by the principle of res judicata and the trial Court could not have allowed the same. He, therefore, seeks to set aside the impugned order.

6. Learned advocate for respondent No.1 supported the impugned order.

7. Admittedly, the order passed below Exhibit-135 was not brought to the notice of Trial Court by either of the parties. In that view of the matter, order of the Trial Court below Exhibit-268 cannot be faulted with. By way of allowing amendment, multiplicity of suits is avoided.

8. In *C. V. Rajendran* (supra), the Hon'ble Supreme Court

held that,

".....Here what is sought to be reagitated is not really the order of remand but the order deciding a germane issue which was allowed to become final at an earlier stage of the same suit. The principle of res judicata applies as between two stages in the same litigation so that if an issue has been decided at an earlier stage against a party, it cannot be allowed to be reagitated by him at a subsequent stage in the same suit or proceedings. This position is laid down in Hope Plantations Ltd. v. Taluk Land Board, (1995) 5 SCC 590, to which one of us (Syed Shah Homammed Quadri, J.) was a party."

9. There cannot be any dispute about above principle. However, fact remains that neither of the parties have brought the earlier order passed below Exhibit-135, to the notice of Trial Court.

10. In the facts of the case in hand this Court is not inclined to exercise extraordinary writ jurisdiction. Writ petition is, therefore, dismissed. Petitioners are at liberty to agitate the issue of res judicata and maintainability of amendment at the time of final adjudication of suit.

(NITIN B. SURYAWANSHI, J.)