

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11329 OF 2017

Hiralal Hari Dhakre

...Petitioner

Versus

Mohanlal Arjundas Shamnani And Others

...Respondents

Mr. Rajendrraa Deshmukh, Senior Advocate a/w. Mr. Shriram Deshmukh i/by. Mr. Devang Deshmukh, Advocate for the petitioner.

Mr. V.D. Sapkal, Senior Advocate i/by. Mr. S.R. Deshpande, Advocate for respondent No. 1.

Mr. S.N. Morampalle, AGP for respondents No. 2 and 3.

Mr. P.P. Patni h/f. Mr. P.F. Patni, Advocate for respondent No. 4.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17th APRIL, 2023

ORDER :

1. The petitioner is aggrieved by order passed by learned 4th Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-176 in Regular Civil Suit No. 638 of 1998, thereby allowing the application filed by the plaintiff under Order VI Rule 17 of Code of Civil Procedure.

2. The plaintiff has filed suit for declaration regarding ownership of the suit property. During the pendency of the suit the plaint was amended by plaintiff twice or thrice. The plaintiff

amended the plaint by inserting para No. 17-A. Defendants submitted his written statement to the amended plaint. Though, Defendant No. 1 was aware that by way of amendment plaintiff has sought recovery of possession of the suit property, he executed registered sale deed on 16.11.2012 in favour of defendant No. 4 thereby selling 20 Are portion of the suit property and handing over its possession to defendant No. 4. This prompted the plaintiff to file application for amendment. Defendants opposed the said application by filing say. The Trial Court has allowed the application. Hence, the present petition.

3. Heard learned Senior Advocate for the petitioner, learned Senior Advocate for the respondent No. 1, learned Assistant Government Pleader for respondents No. 2 and 3 and learned advocate for respondent No 4. Perused the memo of petition, annexures thereto and the impugned order.

4. It is a matter of record that amendment pertains to subsequent development as defendant No. 1 sold 20 Are portion of the suit property to defendant No. 4. The same is challenged by plaintiff in the proposed amendment. Said amendment is necessary for effective adjudication of dispute between the parties and it would avoid multiplicity of proceedings.

5. Learned Senior Advocate for the petitioner states that claim of the plaintiff in the amendment is time barred, hence the Trial Court ought to have rejected the amendment application. Said argument cannot be accepted in the light of the fact that the Trial Court has already taken care of said aspect by observing, 'that whether the claim of the plaintiff will be time barred will require to decide on merits'. It is thus, clear that the Trial Court has rightly kept the point of limitation open, to be decided at the time of final hearing of the suit.

6. The Trial Court by a reasoned order has allowed the application and has rightly exercised discretion in favour of the plaintiff. No prejudice is likely to be caused to the defendants if the said amendment is allowed. For belatedly filing application, the Trial Court has imposed costs of Rs. 5,000/- on the plaintiff. There is no illegality or perversity in the impugned order. No case is made out by the petitioner to exercise extra ordinary writ jurisdiction. The writ petition being devoid of merit is dismissed.

7. Considering the fact that this Court by order dated 18.04.2011 passed in Writ Petition No. 1521/2011, directed the Trial Court to decide the suit before 31.12.2011, the Trial Court

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shall decide the suit within one year from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI, J.]