

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11138 OF 2021

Vatsalabai Bhaskar Patil (Chavan)
Through Her Power Of Attorney Yashwant
Bhaskar Chavan ...Petitioner

Versus

Chhabubai Bhaskar Patil And Others ...Respondents

Mr. Chandrakant Patil h/f. Mr. P.B. Patil (Borse), Advocate for the petitioner.
Mr. Yuvraj Kakade h/f. Mr. N.V. Gaware, Advocate for respondents No. 1 to 21.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th MARCH, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by Civil Judge, Senior Division, Chalisgaon, below Exhibit-57 in Special Civil Suit No. 28/2018, thereby rejecting the application filed by the petitioner/plaintiff under Order 6 Rule 17 of CPC, seeking amendment.

2. The plaintiff has filed suit for partition and separate possession of ancestral properties. In the said suit application Exhibit-57 is filed by the petitioner proposing an amendment

that no partition dated 01.05.1984 as alleged by defendants has ever taken place. Further amendments proposed are that, sale deeds executed by the defendants in favour of third parties in the year 2009, 2004, 2014 etc., be declared null and void and not binding on the share of plaintiff. Said application was resisted by respondents/defendants and it is rejected by the Trial Court holding that the petitioner/plaintiff had knowledge that the suit property has been disposed of at the time of filing of suit. She ought to have amended the plaint in respect of Gut No. 193 at earlier stage. The sale deeds are of the year 2004, 2008, 2009 and 2014 i.e. prior to the filing of the suit. But the plaintiff failed to explain as to how did she come to know about execution of sale deeds now. The Trial Court therefore rejected the amendment application. Said order is impugned in the present petition.

3. Heard the learned advocate for the petitioner and learned advocate for the respondents. Perused the grounds raised in the petition, annexures and documents, the impugned order and the citations relied on by the learned advocate for the petitioner and learned advocate for the respondents.

4. According to the learned advocate for the petitioner

reliefs claimed by way of proposed amendment are consequential reliefs and same ought to have been allowed by the Trial Court as the question of limitation is mixed question of fact and law.

5. Learned advocate for the respondents vehemently opposed the petition by placing reliance on *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another*, 2022 SCC OnLine SC 1128, he submits that the proposed amendment raises time barred claim resulting in divesting the defendants of a valuable accrued right. He therefore, submits that the Trial Court is justified in rejecting the application.

6. It is not in dispute that the amendment application was moved before commencement of trial. In the peculiar facts of the present case, I am inclined to accept the submission of the petitioner that question of limitation is mixed question of law and fact. The application deserves to be allowed in the interest of justice, by keeping the question of limitation open. Allowing the amendment would avoid multiplicity of the proceedings. In the result, writ petition is allowed.

7. The impugned order dated 10.10.2019, passed by Civil Judge, Senior Division, Chalisgaon, below Exhibit-57 in Special Civil Suit No. 28/20418, is hereby quashed and set aside.

8. Application Exhibit-57 is allowed by keeping point of limitation open.

9. The petitioner shall pay cost of Rs. 10,000/- to the respondents within two weeks from the date of receipt of writ of this order.

10. Taking into consideration the fact the suit was initially filed in the year 2015 in the court of Civil Judge Senior Division, Jalgaon and later it was transferred and renumbered as Special Civil Suit No. 28/2018 and same is pending in the court of Civil Judge, Senior Division Chalisgaon Court, the suit is expedited.

[NITIN B. SURYAWANSHI, J.]