

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 824 OF 2018
WITH
CIVIL APPLICATION NO. 12711 OF 2018
IN
SECOND APPEAL NO. 824 OF 2018

Popat Govind Jagtap	... Appellant
<i>Versus</i>	
Devidas Anna Jagtap and Ors.	... Respondents

...
Mr. V.D. Sapkal – Advocate for Appellant
Mr. S.Y. Mahajan – Advocate for Respondent No.1
....

CORAM : GAURI GODSE, J.
DATE : 12th January, 2023

PER COURT :

1. This appeal is filed by the original defendant no.1. Respondent no.1 had filed suit for recovery of possession on the ground of title. The trial court decreed the suit by holding that the respondent no.1 – plaintiff was successful to prove his ownership of the suit property. Being aggrieved by the decree of the trial court, present appellant – defendant filed Regular Civil Appeal No. 46 of 2014. The first appellate court has dismissed the appeal and confirmed the decree of possession passed by the trial court. Hence, defendant has filed present Second Appeal.

2. Learned counsel appearing for the appellant states that, though the contention of appellant was with respect to joint ownership of the suit property, during the pendency of the appeal, the application was filed seeking leave to amend written statement for adding plea of adverse possession. However, the first appellate court has dismissed the application for amendment and has also recorded finding on merits of the proposed amendments. He therefore submits that, the substantial question of law involved in the second appeal is with respect to dismissal of applicant's application for amendment by recording finding on the proposed amendment with respect to plea of adverse possession.
3. Learned counsel for respondent no.1 submits that, both the courts below had examined the evidence on record and has recorded findings on fact with respect to ownership of the respondent no.1. There is absolutely no right to the present appellant to retain possession of the suit property. He submitted that, the application for amendment seeking addition of plea of adverse possession is only afterthought and it is after the trial court passed the decree for possession. He therefore submits that, there is no substantial question of law involved in the

second appeal.

4. I have perused the judgments of both the courts. So far as the title of respondent no.1 is concerned, there is a finding recorded by both the courts, after appreciation of evidence that the respondent no.1 is owner of the suit property. The appellant had come up with a theory that the suit property was jointly purchased by the appellant and respondent no.1 however, the said plea was not accepted by both the courts.
5. With respect to the contention raised on the application for amendment of written statement for adding the plea of adverse possession is concerned, the application is dismissed on the ground that there is no explanation in the amendment application as to why the appellant could not raise the plea of adverse possession at the time of filing written statement. Though there is some observation made by the first appellate court on merits of the proposed amendment, I do not find any error in the reasons recorded by the first appellate court for rejecting the application for amendment. It is true that the application for amendment can be allowed at any stage, provided, there is satisfactory explanation for filing such an

application at belated stage. The first appellate court has rejected the application on the ground that, no proper reasons are mentioned in the application seeking amendment. I do not find any reason to interfere with the said finding.

6. Learned counsel appearing for appellant has relied upon the decision of the Hon'ble Supreme Court in the case of **Olympic Industries Vs. Mulla Hussainy Bhai Mulla Akberally and Ors.** reported in (2009) 15 SCC 528, in support of the contention that additional written statement and amendment to the written statement can be allowed at any stage. So far as the decision of Hon'ble Supreme Court is concerned, the application for amendment was filed in suit under Rent Act and same was filed during the trial i.e. the application was filed on commencement of trial. Therefore, the proposition laid down by the Hon'ble Supreme Court is of avail, to the facts of the present case.

7. In a given case, the application seeking amendment can be allowed at a belated stage, provided satisfactory reasons are given for filing such application at a belated stage. At the same time, while allowing such an application, the prejudice caused to

the opposite party cannot be ignored. In the present case there is already a decree in favour of plaintiff for handing over the possession of suit property, against which the defendant has filed an appeal. Therefore, during pendency of such appeal, the appellant cannot be permitted to amend the pleadings, without making out any case for filing application at a belated stage. Hence, I do not find any reason to interfere with the observations recorded by the first appellate court for rejecting application for amendment as the same was filed at belated stage without any explanation.

8. Even otherwise the contention of the appellant with respect to joint ownership of the suit property is negated by both the courts after proper appreciation of oral as well as documentary evidence on record. I do not find that the present appeal raises any substantial question of law hence, second appeal is dismissed.
9. In view of dismissal of the Second Appeal, pending civil application is also dismissed.

**[GAURI GODSE]
JUDGE**