

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.980 OF 2023**

**BHAGWAN KASHINATH MULE AND OTHERS
VERSUS
SHRIDHAR MURLIDHAR YEVL**

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Mr. Ajinkya A. Joshi h/f Mr. Sharad V. Natu, Advocate for the Petitioners.

Mr. D. V. Tele (absent), Advocate for Respondent.

**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 13th FEBRUARY, 2023.**

FINAL ORDER:-

1. Petition takes exception to the order dated 15.11.2022 passed below Exhibit-71 in RCS No.233/2011 allowing the amendment application partly. Petitioners herein are the original Defendant No 1, 2 and 3 and the Respondent is the original Plaintiff. For sake of convenience the parties are referred by their original status.

2. RCS No.233/2011 was instituted by the Plaintiff seeking declaration that sale deed dated 10.04.2007 executed by Defendant No 1 in favour of Defendant No 2 and 3 is not binding on the Plaintiff and for order of perpetual injunction. The Plaintiff and Defendant No 1 are brothers and it is the case of the Plaintiff that the suit property forming the subject matter was a joint family property and was in possession of the joint family. It is the case of the Plaintiff that the Defendant Nos 2 and 3 have purchased the suit property by preparing bogus records and as such, the sale deed is not binding on the Plaintiff. An application came to be filed after the evidence was led under Order VI Rule 17 of the

Code of Civil Procedure seeking amendment of the plaint. The amendments which were proposed are as under:

- (A) In the body of plaint, in the claim a sentence to added that the sale deed is cancelled and for declaration that sale deed is not binding upon the plaintiff.
- (B) An addition of paragraph 2A pleading that the grandfather of the plaintiff was the protected tenant of the suit property and the mutation entries are prior to 1991-92; thereafter, as the legal heirs of his grandfather Dattu Rustum all rights in respect of occupancy of the property was passed on to the plaintiff after his father and as the entry of the possession was not noted in the 7/12 extract, although the petitioner was in possession of the property, there is no record of the same in 7/12 extract;
- (C) Paragraph to be added as 4A that as the Plaintiff's grandfather was being looked after by the Plaintiff, the possession of the property was handed over to the Plaintiff with the consent of all the brothers and the Plaintiff's name is mutated in the occupancy column prior to 1984 which is being continued. As such, the disputed property is being occupied by the Plaintiff. The Tahsildar in the proceedings under Tenancy Act have issued a certificate under Section 38-E in favour of the Plaintiff as protected tenant;
- (D) Paragraph 6(A) to be added that the sale deed which has been executed in favour of Defendant no.2 is without previous sanction and as such, the sale deed under the Tenancy Act is liable to be cancelled and as such, a declaration to be given that both the sale deeds are cancelled and not binding upon the Plaintiff's possession of the suit property;

- (E) Paragraph no.11 pertaining to the Court fees to add the sum of Rs.3,89,000/- and to replace the Court fees with half of Rs.12,230/- i.e. Rs.6115/-;
- (F) To add in prayer Clause (B) after the words “to declare the sale deed as cancelled and not binding upon the plaintiff and the disputed property”.

3. It was the contention of the Plaintiff that the necessary pleadings which are now sought to be added inadvertently remained and as subsequently the decision as regards the tenancy has been passed, it is subsequent development and the proposed amendment to be permitted. The Trial Court by the impugned order dated 15.11.2022 permitted the amendment only as regards (A), (C), (E) and (F) and rejected the rest of the amendments.

4. Learned counsel for the petitioners submits that none of the amendments could have been permitted in as much as by the proposed amendment the respondent/plaintiff is seeking to change the stand which has been taken by the respondent/plaintiff. He has invited the attention of this Court to the pleadings in the plaint, wherein it has been stated that the property was in the joint possession of the parties and he would submit that by the proposed amendment the respondent/plaintiff is seeking to assert that the property is in his exclusive possession.

5. Considered the submissions raised by the parties.

6. On perusal of the averments made in the plaint and the amendments which are proposed and which have been granted by this Court, it cannot be disputed that the factual background has been set out in the plaint and by this amendment the

petitioner is seeking to elaborate on the stand which has been taken. As far as contention of the learned counsel for the petitioners as regards the change of stand, a careful reading of paragraph 4 for the plaint would show that the averment therein is that the respondent/plaintiff is the part of a joint family and there are other seven brothers and the possession over the suit property since their grandfather have continued jointly till date. The amendment which has been permitted is that the grandfather has permitted the respondent/plaintiff with the consent of other brothers to occupy the land, which is also recorded in the revenue records and the other amendments as regards the Court fees and elaboration of the relief sought.

7. It is a settled position that the merits of the amendments are not required to be gone into and all that is to be considered is whether the amendments are necessary for deciding the issue in controversy. Considering the proposed amendment and the averments in the plaint, in my opinion a factual background having been laid in the proceedings and one of the proposed amendment is by virtue of subsequent development, no infirmity can be found in the order of the Trial Court permitting the averments. The contention of the learned counsel for the petitioners that the amendment would change the nature of the suit cannot be sustained in view of the above observations.

8. For the reasons above, there is no merit in the writ petition. Writ Petition stands dismissed.

(SHARMILA U. DESHMUKH)
JUDGE