

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 3956 OF 2022

1. Sachin Maroti Burile
Aged about 33 Years,
Occ. Agriculturist
R/o Khanji Ward, Warora, Tah.Warora,
District Chandrapur
2. Mahesh Chandrakant Popat
Aged about Major
Occ. Agriculturist
R/o Hanuman Ward, Warora,
Tah.Warora, Dist. Chandrapur

...Petitioners

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1. Rajaram Shankarrao Kunkule
Aged about 64 years,
Occ. Agriculturist
R/o Tilak Ward, Warora, Tah. Warora
District Chandrapur
2. Vasantrao Shankar Kunkule
Aged about 70 years,
Occ. Agriculturist
R/o Warkhawadi, Tah. Wai, District
Satara
3. M/s Ahatashyam & Sadiq Ali,
Through its partner
Ahatashyam Sadakat Ali,
Aged about 45 years, Occ. Business
R/o Abhyankar Ward, Warora, Tah.
Warora, District Chandrapur
4. Sadiq Sadakat Ali,
Aged about 39 years, Occ. Business
R/o Abhyankar Ward, Warora,
Tah.Warora, Dist. Chandrapur

5. Sunil Narayan Warkheda
Aged about 45 years,
Occ. Business
R/o Sardar Patel Ward, Warora
Tah. Warora, District Chandrapur ... Respondents

Shri Rohit Joshi, Advocate for the petitioners.

Shri V.B.Bhise, Advocate for the respondent nos. 1 and 2.

Shri Y.B.Kullarwar, Advocate for the respondent nos. 3 and 4.

CORAM : ANIL S. KILOR, J.

DATED : 15th MARCH, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith heard finally by consent of the parties.

2. In this writ petition, the challenge is raised to the order below exhibit 36 dated 20th January, 2022 passed by Civil Judge, Senior Division, Warora in Special Civil Suit No. 8 of 2017, rejecting an application for amendment.

3. The petitioner entered into an agreement with the respondent nos. 1 and 2 for sale of survey no. 287/A and survey no. 284, vide two separate agreements on 7th November, 2018. On 21st January, 2011, the respondent nos. 1 and 2 along with two other brothers sold the entire survey Nos. 287/A to Aditya Developers. Thereupon, the petitioners filed a suit for specific performance of contract against the respondent nos. 1 and 2 in respect of survey no. 287/A, which was sold out prior to filing of the suit, therefore, the suit was supposed to be filed as regards

the survey no. 284. However, it was wrongly mentioned as survey no. 287/A.

4. In the written statement, the defendants did not disclose the fact that 287/A was already sold out in the year 2011 but the only pleadings made were to the effect that no proper inquiry was made by the plaintiff and in casual manner the suit was filed.

5. Subsequently, on getting the knowledge about the sale-deed executed by the defendants in respect of survey no. 284 in favour of the respondent nos. 5 who further sold it to the respondent nos. 3 and 4, the application for amendment was moved under Order VI Rule 17 of Code of Civil Procedure (in short hereafter referred as “CPC”) pointing out the error in mentioning the survey number. The said application came to be rejected vide impugned order dated 20th January, 2022, which is subject matter of the present writ petition.

6. Shri Joshi, learned counsel for the petitioner points out that, only on the ground of limitation, the application came to be rejected, whereas, the Court has not taken into consideration the period of limitation extended during the period of pandemic from March, 2020 till February, 2022.

7. He further submits that the suit was filed on 30th March, 2017 and it was intended to file as regards the survey no. 284 and the plaintiffs never wanted to agitate their claim in respect of land survey no. 287/A which was sold out much prior to the filing of the suit. He

therefore submits that after getting the knowledge about the sale-deed executed in respect of survey no. 284 on 1st August, 2017, immediately thereafter application for amendment was moved which came to be rejected on the ground of limitation. Accordingly, he submits that the order of rejecting the amendment application is erroneous.

8. On the other hand, Shri Bhise, learned counsel for the respondent nos. 1 and 2 by placing reliance on a judgment of Co-ordinate Bench of this Court in the case of Anil S/o Ramsing Bilawar and others Vs. Anita W/o Gopal Kadam and another¹ submits that it is a settled law that the amendment should be declined if fresh suit on the amended claims would be barred by limitation on the date of application. He submits that as the sale-deed in respect of land survey no. 284 was executed on 1st August, 2017 and the amended application was moved on 8th October, 2020, the learned trial Court has rightly rejected the application on the ground of limitation.

9. Shri Kullarwar, learned counsel for the respondent nos. 3 and 4 reiterates the submission of Shri Bhise and submits that even the discrepancies in mentioning the area of land show that the case put up by the petitioners that under a wrong impression that the land survey no. 284 was sold out prior to filing of the suit, the suit was filed as regards survey no. 287A, appears to be incorrect. He accordingly submits that allowing the application for amendment will cause prejudice to

¹ 2022(2) Mh.L.J 345

respondent nos. 3 and 4 who are *bona fide* purchaser of the suit property. Accordingly, he prays for rejection of the present writ petition.

10. In light of rival contentions raised by both the parties, I have perused the record and the impugned order.

11. The Hon'ble Supreme Court of India in the case of Revajeetu Builders and Developers Vs. Narayana Swsami and sons² has laid down the principle for consideration and application for amendment which are summarized as thus:

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejection the application for amendment :

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. (emphasis supplied)

12. The above referred principle as discussed by the Hon'ble Supreme Court of India and particularly clause 6 of the same states that as a general rule, the Court should decline amendment if a fresh suit on the amended claims would be barred by limitation on the date of application.

13. No doubt, if this principle is applied in the present case the suit may be held as barred by limitation as sale-deed was executed on 1st August, 2017 and the amendment application was filed on 8th October, 2020. However, the fact that during the period from March, 2020 till February, 2022 the period of limitation was extended and this fact has not been considered by the trial Court.

14. Moreover, the trial Court has not also considered that in a case under Specific Relief Act, the limitation start running from the date of denial of performance of contract by the owner if the case is covered by second part of Article 56 of the Limitation Act.

15. In the circumstances, on both the counts, I am of the opinion that the matter needs to be remanded back to the learned trial Court to decide the application afresh after giving sufficient opportunity to both the parties and after taking into consideration the relevant law in this regard. Accordingly, I pass the following order.

i. The writ petition is partly allowed;

- ii. Order below exhibit 36 dated 20th January, 2022, passed by Civil Judge, Senior Division, Warora in Special Civil Suit No. 8 of 2017 is hereby quashed and set aside;
- iii. The matter is remanded back to the trial Court to decide the application afresh after giving sufficient opportunity to both the parties.
- iv. Needless to mention that the trial Court shall not get influence by the observations made in this order and decide the application on its own merit as per the law.
- v. The learned trial Court shall decide the application within two months from the next fixed date in the suit.

[ANIL S. KILOR, J.]

SACHINDANAND
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