



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

917 WRIT PETITION NO. 4437 OF 2017

Nimba Chagan Sonar

VERSUS

Dilip Magan Sonar

...

Advocate for the Petitioner : Mr. Wani Girish V.

...

CORAM : R. M. JOSHI, J.

Dated : July 02, 2024

PER COURT :-

1. None for the respondent in spite of service of notice. This indicates that respondent is not interested in opposing the petition.

2. Petitioner takes exception to order dated 21/12/2016, passed by the Trial Court in Regular civil Suit No.69/2014 whereby the application filed by the defendant vide Exhibit 48 for amendment to the written statement and counter claim under Order VI Rule 17 of Code of Civil Procedure came to be rejected.

3. Learned Counsel for the petitioner submits that the respondent/plaintiff filed suit against the defendant wherein the injunction was granted by allowing Exhibit 6 on 12/04/2016. It is submitted that during the hearing of the said Exhibit 6, it was revealed to the defendant that there is a Will of deceased Kisan Shyamji Sonar dated 19/11/1963. Defendant, therefore, sought amendment to the written statement and counter claim in order to contend that the said Will is not

binding on suit property to the extent of his share. It is his further contention that the Trial Court has not rejected the application on the ground that the said challenge is beyond limitation but rejection is only for the reason that the filing of document by the plaintiff will not give cause of action to the defendant to amend his counter claim.

4. Perusal of the record indicates that the defendant has not only filed written statement to the plaint but has also filed counter-claim. Meaning thereby, it is open for the defendant to substantiate his positive case by leading appropriate evidence as it a suit. In such circumstances, unless it is observed by the Trial Court that the purported challenge to the Will is beyond limitation, such application for amendment ought not to have been rejected. Perusal of order below Exhibit 6 also indicates that the cognizance have been taken by the learned Trial Court of the Will of the grandfather of plaintiff and defendant. In such circumstances, it cannot be said that the Will in question is totally unconnected with the suit and counter claim filed by the defendant. Thus, there is no justification for refusing to permit the defendant to cause amendment to the written statement and counter claim.

5. No prejudice will be caused to the plaintiff if amendment is allowed as it would be open for him to resist the said contention.

6. In view of the above, the impugned order cannot sustain, hence said order is set aside. Application Exhibit 48 stands allowed. The learned Trial Court to permit the respondent to carry out amendment.

7. Petition is allowed in aforesaid terms.

(R. M. JOSHI, J.)

vj gawade/-.