



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

4 WRIT PETITION NO. 7811 OF 2024

Sampat Namdeo Vighe

VERSUS

Dighambar Vishwanath Harale And Others

...

Advocate for the Petitioner : Ms. Rasika Santosh Pathak (through VC)

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CORAM : R. M. JOSHI, J.

Dated : July 29, 2024

PER COURT :-

1. Heard.
2. Petitioner/ original plaintiff in Regular Civil Suit No.302/2015 is taking exception to the order passed below Exhibit 60 rejecting his application for amendment to plaint.
3. Plaintiff has filed suit against the defendants for injunction restraining the defendant No.1 from obstructing the possession of the plaintiff in respect of the suit property. In the plaint itself there is a mention about allaged execution of Will by deceased Rukminibai dated 04/08/2013. There are further allegations to the effect that the said Will is not executed by Rukminibai neither she signed thereon nor affixed thumb impression. It is also claimed that prior to her death she had no proper physical and mental state to execute Will.
4. Defendant filed written statement on 03/12/2015 confirming the fact of the execution of Will by Rukminibai. Thereafter, on 24/01/2024 by

filing application vide Exhibit 60 it is sought to be contended by the plaintiff that the Will dated 04/08/2013 is bogus and void ab initio and declaration is sought to that effect. The learned Trial Court dismissed the said application, hence this petition.

5. Learned Counsel for the petitioner/ plaintiff submits that the after the original Will was placed before the Trial Court in the evidence, it came to the notice of the plaintiff about execution of said Will, and as such, the amendment needs to be allowed.

6. Perusal of the record indicates that the plaintiff had knowledge about the alleged Will executed by Rukminibai on 04/08/2013. Details of the plaint clearly show that the plaintiff had specifically raised objection with regard to the execution of the said Will by her. In spite of this, no prayer was made for setting aside the said Will or seeking any declaration that it is void..

7. Learned Trial Court has observed that the plaintiff had knowledge about the Will and in spite of the same, no amendment was sought in the suit for about 08 to 09 years with a prayers it is now asked to be incorporated in the plaint. Undisputedly the knowledge of the plaintiff with regard to the alleged Will of Rukminibai gets back to the time prior

to filing of suit in year 2015. Thus, when there is no challenge to the said Will by the plaintiff within a period of limitation, now it is not permissible for plaintiff to seek the said prayer on the pretext of amendment to the plaint.

8. In the facts and circumstances of the case, Court finds no perversity in the impugned order passed by the learned Trial Court, as such, no interference is called therein.

9. Petition stands dismissed.

(R. M. JOSHI, J.)

vj gawade/-.