



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12439 OF 2023

RAMESHWAR VASUDEO SARAF
VERSUS
SURESH VASUDEO SARAF AND OTHERS

Mr. Girish S. Rane, Advocate for the petitioner
Mr. N. V. Dhake, Advocate for respondent No.1.
Mr. M. V. Navandar, Advocate for respondent Nos.2 and 3.

CORAM : R. M. JOSHI, J.

DATE : 27th JUNE, 2024

PER COURT :-

1. This petition takes exception to the order of rejection of application filed by plaintiff under Order 6 Rule 17 of the Code of Civil Procedure seeking amendment to the plaint.

2. The facts of the case indicates that suit is filed by the plaintiff with specific contention that he is the co-owner of the suit property along with the defendants. Defendants disputed the said fact and claimed exclusive owner ship with further submission that the plaintiff is the gratuitous licensee. The plaintiff thereafter filed this application Exhibit 111 for amendment of plaint contending since the plaintiff is openly in possession adverse to the defendants, he has become owner by way of adverse possession.

3. Learned counsel for the petitioner has sought to argue that as per the law laid down by the Hon'ble Supreme Court the Courts are required to be liberal while granting amendment. To support his submission he placed reliance on the judgment in case of *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Anr*, *AIROnline 2022 SC 283*. Similarly it is his contention that inconsistent pleas are permitted to be taken in view of *Ganesh Prasad Vs. Rajeshwar Prasad and Ors.*, *AIROnline 2023 SC 180*. Thus, according to him in view of the above judgments the impugned order cannot sustain. It is further submitted that except for a solitary reason recorded in paragraph No.8 of the order there is no other reason mentioned for the rejection of the application.

4. Learned counsel for the respondent opposed the said submission by contending that mutually destructive pleas are not permissible though inconsistent pleas may be allowed to be raised with election of one of them finally.

5. There is no dispute about the fact that the plaintiff has filed suit with specific plea in the plaint that he is owner of the property. Once such plea is raised that he is owner of the property, question of he being permitted to take destructive plea of being in adverse possession of the

suit property cannot be allowed. Merely because defendant denies the ownership of plaintiff, he would not get right to claim title by adverse possession. Such defence would not depend upon written statement of defendant but can be raised only on positive plea of plaintiff that he admits the title of defendant but claims open and adverse possession for period not less than 12 years continuously. Though this Court finds that the learned Trial Court did not take into consideration the aspects sought to be argued on behalf of the defendants with regard to the mutually destructive plea, in the peculiar facts and circumstances of the case, this Court is not inclined to cause any interference in the impugned order.

6. In view of the above discussion, petition stands dismissed.

(R. M. JOSHI, J.)

ssp