



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9544 OF 2013

Kalabai Kathalasing Rajput And Another
VERSUS
Kevalsing Tuljasing Warma And Others

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Mr. M. G. M. Shaikh, Advocate for the Petitioner
Mr. S. E. Siddiqui, Advocate for Respondents

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CORAM : R.M. JOSHI, J
DATE : JUNE 26, 2024

PER COURT :

1. By consent of the parties, heard finally at admission stage.
2. Parties are referred to by their nomenclature in the original proceedings.
3. Plaintiffs in RCS No. 216/2011 take exception to the order dated 03.09.2013 passed below Exh. 57 whereby Plaintiffs were seeking amendment to the plaint under Order VI, Rule 17 of Code of Civil Procedure to add prayers seeking declaration that the sale deeds of the land in question executed in favour of the Defendant Nos. 4 to 7 is not binding on them.

4. There is no dispute about the fact that initially Defendant Nos. 4 to 7 were not party to the suit wherein Plaintiffs have sought declaration in respect of suit property to be owner thereof. Defendant Nos. 4 to 7 were joined subsequently to the suit. They filed written statement and claim title in the suit property on the basis of sale deed no. 1134/1966. It is contended by the Plaintiffs in the application Exh. 57 that from the written statement filed by these Defendants the information about execution of the sale deed in their favour was received by the Plaintiffs. Thereafter, he applied for the certified copy of the said document and then application is moved seeking declaration that the said sale deed is not binding on them.

5. Learned trial court has rejected the application only on the ground that there is evidence to show that the names of Defendant Nos. 4 to 7 are mutated in the revenue record in respect of suit properties since long.

6. Learned Counsel for Plaintiffs submits that

only from the written statement Plaintiff got knowledge of execution of sale deed dated 02.06.1967 bearing no. 1134/1966. It is his submission that under Order VI, Rule 17 it is permissible for the party to seek amendment on noticing any fact subsequent to the filing of the suit.

7. Learned Counsel for Defendants opposed the Petition on the ground that the Plaintiffs are trying to bring the suit for the declaration of the sale deed executed in the year 1966 within limitation.

8. There cannot be any dispute with regard to the fact that it is always open for the Defendants to raise issue of limitation. In the instant case, as per the contention of the Plaintiffs in the application Exh. 57 they had no knowledge about the sale deed in question and it is only after filing of the written statement by these Defendants this fact is revealed to them. In such circumstances, it was not justified for the learned trial Court to reject the said application only for the reason that there is revenue record indicating mutation entries in respect of suit properties in favour of

defendants since year 1966. Merely because mutation entries are taken in the revenue record it cannot be presumed that the said entries are taken on the basis of sale deed which is sought to be challenged. In such circumstances, by keeping the issue of limitation open for challenging by these Defendants, the learned trial Court ought to have allowed the application for amendment of the plaint.

9. As a result of the above discussion, Petition is allowed. The impugned order dated 03.09.2013 passed below Exh. 57 is set aside. Application Exh. 57 filed in RCS No. 216/2011 stands allowed. It is clarified that the issue of limitation is kept open for determination by Trial Court, as per law.

(R. M. JOSHI, J.)

Malani