



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 11787 OF 2014

Shivaji Potanna Gadamwar

VERSUS

The State Of Maharashtra And Others

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Mr. S. P. Sonawane a/w Mr. S. S. Thombre, Advocate for  
the Petitioner

Mrs. P. R. Bharaswadkar, AGP for Respondent Nos. 1 & 2

Mr. V. G. Salgare, Advocate for Respondent Nos. 3 & 4

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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. Petitioner is Plaintiff in RCS No. 71/2010 and  
being aggrieved by order passed below Exh. 106 under  
Order VI, Rule 17 of Code of Civil Procedure rejecting  
application to amend the plaint, present Petition is  
filed.

3. Plaintiff filed suit for mandatory injunction  
to restore plaintiff's possession over the suit land  
and for perpetual injunction against Defendant Nos. 1  
to 4 initially. After written statement was filed by

Defendant Nos. 3 and 4 on 09.07.2009 Plaintiff came to know that the suit properties transferred by Defendant Nos. 3 & 4 to Defendant No. 5 in the year 2011. Plaintiff however did not claim any relief against Defendant No. 5.

4. The suit was tried and evidence was led. Thereafter, application Eh. 106 is filed for seeking amendment to the plaint on two counts i.e., averments and the relief with regard to the specific performance of oral contract between Plaintiff and Defendant Nos. 3 and 4 and relief of declaration in respect of sale deed executed by Defendant Nos. 3 and 4 in favour of Defendant No. 5. The said application was opposed by Defendants and ultimately by passing impugned order came to be rejected.

5. Learned Counsel for the Petitioner/Plaintiff submits that since the averments in respect of sale deed executed between Defendant Nos. 3 and 4 in favour of Defendant No. 5 are taken in the written statement, the trial Court ought to have allowed the Plaintiff to add relief seeking declaration in respect of the said

sale deed. It is his contention that in view of the earlier pleadings, the relief sought is not beyond limitation as observed by the learned trial Court in the impugned order. As far the averments and relief of specific performance of contract is concerned, it is his contention that the amendment ought not to have been rejected.

6. Learned AGP and learned Counsel for Respondent Nos. 3 and 4 opposed the said submissions and supported the impugned order.

7. Perusal of the record indicates that suit is filed by the Plaintiff originally against Defendant nos. 1 to 4 for mandatory injunction to restore their possession over the suit land and for perpetual injunction. On 09.07.2009 Defendant Nos. 3 and 4 filed written statement disclosing the sale deed being executed by them in favour of Defendant No. 5 in respect of one of suit properties. It is thus clear that as on 09.07.2009 it was within the knowledge of the Plaintiff about the said transaction. Pertinently, though Plaintiff has amended the plaint and has arrayed

Defendant No. 5 to the proceedings, however, no relief of declaration in respect of the said sale deed was sought . By present application i.e., Exh. 106 amendment to the plaint is sought. As per record the knowledge of Plaintiff about the said sale deed was on 09.07.2009. Any relief of declaration that sale deed not binding on the Plaintiff ought to have been claimed within three years. Admittedly, such relief is not claimed within three years and hence, it is rightly observed by the trial Court that the same is barred by limitation.

8. As far as amendment in respect of specific performance of contract is concerned, the plea now sought to be raised by way of amendment was within knowledge of Plaintiff at the time of filing of the suit, as Plaintiff seeks to claim that there was oral agreement dated 31.12.2005 in respect of the property in question. Hence, now it is not open for the Plaintiff to file application under Order VI, Rule 17 CPC after commencement of trial without showing due diligence. Considering proviso to Order VI, Rule 17 CPC, unless due diligence is shown by Plaintiff, it was

not open for the learned trial Court to allow the application and the same has rightly been rejected by the learned trial Court.

9. In view of the above discussion, this Court finds no perversity in the order impugned. Hence, Petition stands dismissed.

(R. M. JOSHI, J.)

Malani