



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 6633 OF 2022

Subrao Sidu Kadam Decd. Thr
Lhr Raosaheb Subrao Kadam
Age : 59 years, Occ.: Agriculture
r/at Siddeshwadi (Savalaj),
Tal. Tasgaon, Dist. Sangli

...Petitioner

Vs.

Keru Rama Chavan Dec. through
his Lrs

1. Appasaheb Keru Chavan
Age : 65 years, Occ.: Service

2. Raoso Keru Chavan,
age 63 years,

3. Ananda Keru Chavan,
Age 62 years

4. Kondabai Vilas Jadhav
Age 70 years

5. Mangal Narayan Dubole
Age 62 years

6. Tai Popat Dubole
Age 55 years

All R/at Siddheshwadi (Savlaj)
Tal. Tasgaon, Dist. Sangli

7. Subrao Sidu Kadam
- deceased through LR's

a. Rukhmini Subrao Kadam

Age : 90 years, occ: Agriculture

b. Shalan Jagannath Khandare

Age : 85 years, occ. : Agriculture

c. Malan Dattu Sonawane

Deceased through legal heirs

c(i) Sou Manisha Narayan Khandare

Age : 50 years, occ.: Agriculture

R/at Dighanchi, Tal. -- Atpadi, Dist. Sangli

d. Shivaji Subrao Kadam

Deceased through legal heirs

d(i) Tulsabai Shivaji Kadam

Age : 75 years, occ: Household

R/at Dighanchi, Tal. - Atpadi, Dist. Sangli

d(ii) Shrikrishna Shivaji Kadam

Age : 31 years, occ.: Education

d(iii) Maruti Shivaji Kadam

Age : 30 years, occ. Agriculture

d (iv) Jayashree Mahesh Trimbake

Age : 41 years, occ. Household

r/at Lakshmi Galli, Ward No. 5,

Opp. Market Yard, Jath, Tal. Jath,

Dist. Sangli

d(v) Rajashree Shivaji Kadam

Age : 39 years, Occ.: Household

No. (b)(c) and (e) r/at A/P Palghar

Tal. Palghar, Dungipada, House No. 935,

Manor Road, Dist Palghar

d(vi) Rekha Chandrakant Khandare
 Age : 37 years, Occ.: Household
 r/at House no. 1563, Neharunagar
 Tasgaon Road, Vita, Tal. Khanapur
 Dist. Sangli

d(vii) Bhagyashree Dipak Shinde
 Age : 35 years, occ.: household
 r/at Dhorgalli, Malhari Peth
 Satara, Dist. Sangli

e. Vimala Manohar Shinde
 Age : 63 years, occ.: Agriculture
 r/at House no. 339, Satara, Dist. Satara

f. Suman Baban Sonawane
 Age : 90 years, occ. Agriculture
 R/at Shinde Galli, Tasgaon,
 Tal. Tasgaon, Dist. Sangli

g. Anusaya Dayanand Sonawane
 Age : 57 years, occ.: Agriculture
 R/at Chembur, Mumbai 71.

h. Sambhaji Subrao Kadam
 Age : 50 years, occ.: Agriculture

i. Sajubai Anandrao Pol
 Age : 48 years, occ.: Agriculture
 r/at Ashta, Tal Walwa, Dist. Sangli

j. Shahaji Subrao Kadam
 Age : 45 years, occ: Agriculture
 Nos. 7 (a), h and (j) r/at
 Siddhshwadi
 (Savalaj) Tal. Tasgaon, Dist Sangli.

...Respondents

**ALONGWITH
CIVIL WRIT PETITION NO. 6629 OF 2022**

Raoso Subrao Kadam

Age : 59 years, Occ.: Agriculture
r/at Siddeshwadi (Savalaj),
Tal. Tasgaon, Dist. Sangli

...Petitioner

Vs.

1. Appasaheb Keru Chavan

Age : 65 years, Occ.: Service

2. Shivaji Subrao Kadam

Deceased through legal heirs

a. Tulsabai Shivaji Kadam

Age : 75 years, occ. Household

R/at Dighanchi, Tal. - Atpadi, Dist. Sangli

b. Shrikrishna Shivaji Kadam

Age : 31 years, occ.- Education

c. Maruti Shivaji Kadam

Age : 30 years, occ.: Agriculture

d. Jayashree Mahesh Trimbake

Age : 41 years, Occ. Household

r/at Lakshmi Galli, Ward no. 5

Opp. Market Yard, Jath, Tal. Jath,

Dist. Sangli

e) Rajashree Shivaji Kadam

Age : 39 years, occ. : Household

No. (b)(c) and (e), r/at A/P Palghar

Tal. Palghar, Dungipada, House No. 935,

Manor Road, Dist. Palghar

f) Rekha Chandrakant Khandare
Age : 37 years, occ. : Household
r/at House No. 1563, Neharunagar,
Tasgaon Road, Vita, Tal. Khanapur
Dist. Sangli

g) Bhagyashree Dipak Shinde
Age : 35 years, Occ. Household
r/at Dhorgalli, Malhari Peth
Satara, Dist. Sangli.

3. Subrao Sidu Kadam – deceased through LR's

a. Rukhmini Subrao Kadam
Age : 90 years, occ: Agriculture
Also in capacity of supporting appellant

b. Shalan Jagannath Khandare
Age : 85 years, occ. : Agriculture

c. Malan Dattu Sonawane
Deceased through legal heirs

c(i) Sou Manisha Narayan Khandare
Age : 50 years, occ.: Agriculture
R/at Dighanchi, Tal. -- Atpadi, Dist. Sangli

d. Vimala Manohar Shinde
Age : 63 years, occ.: Agriculture
r/at House no. 339, Satara, Dist. Satara

e. Suman Baban Sonawane
Age : 90 years, occ. Agriculture
R/at Shinde Galli, Tasgaon,
Tal. Tasgaon, Dist. Sangli

f. Anusaya Dayanand Sonawane

Age : 57 years, occ.: Agriculture
R/at Chembur, Mumbai 71.

g. Sambhaji Subrao Kadam
Age : 50 years, occ.: Agriculture

h. Sajubai Anandrao Pol
Age : 48 years, occ.: Agriculture
r/at Ashta, Tal Walwa, Dist. Sangli

i. Shahaji Subrao Kadam
Age : 45 years, occ: Agriculture
Also in capacity of supporting Appellant
Nos. 3 (a), h and (j) r/at
Siddhshwadi
(Savalaj) Tal. Tasgaon, Dist Sangli.

...Respondents

Mr. Himanshu Kode	Advocate for the Petitioners
Mr. Kuldeep Nikam	Advocate for the Respondent Nos. 1 to 6

CORAM : S. M. MODAK, J.

DATE : 13th NOVEMBER 2024

ORAL JUDGMENT :-

1. Heard learned Advocate for the Petitioners/plaintiff/legal representatives of Plaintiffs and learned Advocate for the Defendant No. 1/legal representatives of original defendant No.1. He/they are the only contesting party/parties.

2. The Petitioners have filed two suits before the trial Court. They are RCS No 121/90 and 121/90 before the Court of Civil Judge Junior Division, Tasgaon Sangli. They are instituted for redemption of mortgage. There is alternate prayer for execution of the sale deed/re-conveyance deed from the Defendant/defendants. I have not given further details of plaints and written statements. Both the parties adduced evidence. After appreciating the evidence, both the suits were dismissed on 9/11/2011 vide two separate judgments. It seems on one hand the Plaintiff is describing the documents as ‘mortgage’ whereas the contesting defendant/s has/have contended document as ‘sale deed’.

3. While dismissing the suit the trial Court observed, the Plaintiff has not sought “*declaration that the sale deeds are illegal*” (*para no. 28 and 29 of respective judgements*).

4. Plaintiff/plaintiffs have filed two civil appeals in the year 2011 before the Court of District Judge, Sangli. In those first appeals, after long period in the year 2020, by way of separate applications, the present Petitioners have prayed for amendment of the respective plaints thereby incorporating the prayer for declaration “*that the*

mortgage deeds are bogus, illegal and for cancellation". (page no.22 of annexures of both writ petition) Only reason quoted is prayer for declaration is consistent with prayer for possession and prayer for possession is not barred by law of limitation. These applications were opposed before the appellate court by contesting respondent/s. They have objected for allowing the amendment on account of delay of more than 31 years because the suits are of the year 1990 and amendments were sought in the year 2020. There are also other amendments relating to legal representatives of deceased plaintiff.

5. The Appellate Court vide two separate orders dated 04.03.2021 rejected the application for amendment. They have challenged these orders by the present two writ petitions.

6. While issuing the notice, learned Advocate for the Petitioners after taking instructions **made submission that they will not adduce any evidence.** This is recorded on 08.06.2022. On this background, I have heard learned Advocates for both the sides.

7. Learned Advocate Mr. Kode reiterated the submission that his client will not adduce fresh evidence if the amendment is allowed by this Court. According to him, all averments were made in the plaint in

support of their contention that document is not sale deed but the mortgage deed. Only what was omitted was ‘not seeking the necessary declaration’ and it is now sought by way of amendment. There is a strong opposition by learned Advocate Shri Kuldeep Nikam for legal representatives of Respondent No. 1. He invited my attention to the following documents:-

- (i) Mortgage deed is dated 08.04.1968 and suit were filed in the year 1990.
- (ii) Not only the original reliefs but this amended reliefs, if allowed, are also hopelessly barred by law of limitation.
- (iii) If amendment is allowed, the observation of the trial Court of not seeking the relief of the declaration will be nullified.

8. It is true law of amendment of pleadings becomes more stringent as the litigation reaches to next level. In these cases, it is at the stage of first appeal. This Court feels, if the Petitioner is ready to argue the appeal on the basis of the evidence which is already adduced there is no hitch in allowing the amendment. Because the submission is basic averments were made in the plaint, opportunity to deny was granted. Ultimately, the Court has to do an endeavour that both the sides

should get an opportunity to put forth their case before the Appellate Court. Under the set of peculiar facts, I am allowing amendments. But the issue does not rest there.

9. There is an issue from which date these amendments will come into effect. Already in the judgment delivered by the trial Court, there was an issue of limitation already framed. No doubt learned Advocate Mr. Nikam is right it was framed on the basis of facts and reliefs then sought. This Court feels even if the amendment is allowed, the Appellate Court can certainly give findings about whether the suit filed originally was within limitation or not because those findings are in fact are already challenged in the appeals.

10. Normal rule is amendment always relate back to date of filing of suit. But if the Court directs, then such amendment comes into operation from the date of filing of applications. In the peculiar facts involved in these writ petitions, these amendments will come into force from the dates of amendment applications. The reason is not only that there were not filed when the suits were pending but even after long gap after filing of appeals, these amendment applications were filed. The appeals were filed in the year 2011 and amendment applications

were filed in the year 2020. Whether they were filed by original plaintiff or his legal representatives is not material. The reason is how a litigant can sleep over his/their rights and suddenly woke up and file new applications. So if they are to be allowed, they can only from the date of amendment applications only.

11. It is settled law that merits of the amendment cannot be decided at the time of the deciding amendment application. When the Petitioner does not want to adduce any evidence, even the legal representatives of Defendant No. 1 will not adduce any evidence. Now the Appellate Court can decide both the appeals on the basis of the available evidence only.

12. In view of that following order is passed:-

ORDER

- (i) Orders dated 04.03.2021 passed by the Court of District Judge-4, Sangli in Regular Civil Appeal No. 470 of 2011 and Regular Civil Appeal No. 471 of 2011 are set aside.
- (ii) The amendment applications filed by the Petitioners in both the appeals are allowed.
- (iii) Amendment be carried out within four weeks from uploading of

the order.

(iv) Amended copy be served on other side.

(v) The Appellate Court to decide the appeals on the basis of the available evidence and also the right of legal representatives of defendant no. 1 to challenge the amended prayer on the ground of limitation is kept intact.

13. Both Writ Petitions are disposed of.

[S. M. MODAK, J.]