

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12402 OF 2015
WITH
INTERIM APPLICATION NO. 13339 OF 2023
WITH
INTERIM APPLICATION NO. 13338 OF 2023
WITH
CIVIL APPLICATION (ST) NO. 24563 OF 2019

Kalgonda Pirgonda Patil

.. Petitioner

Versus

~~Pirgonda Babu Patil~~

(since deceased) through His LRs.

Vimal Balgonda Patil & Ors.

.. Respondents

.....

- Mr. N.J Patil i/by Mr. Akshay Patil for Petitioner
- Mr. Ishan Kapse for Respondent No.4

.....

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 19, 2024

P. C.:

1. Heard Mr. Patil, learned Advocate for Petitioner and Mr. Kapse, learned Advocate for Respondent No. 4.

2. By virtue of the impugned order dated 09.10.2015 passed by the learned Trial Court below Exh. 141, Application filed by Plaintiff (Petitioner herein) under O. VI, R. 17 of the CPC stands rejected.

3. Writ Petition is filed in the year 2015. It has been argued before me today. It is seen that original Suit is filed in the year 2000 by the Plaintiff being RCS No. 249/2000 seeking declaratory relief in the

nature of cancellation of various registered documents executed by the Plaintiff's father with third party Defendants. In 2015 i.e. after a lapse of 15 years, Plaintiff has filed Application below Exh. 141 seeking amendment to the Suit plaint. Maintainability of the Application is justified by Mr. Patil on the ground that trial has not commenced and the Application under O. VI, R. 17 of the CPC can be maintained at any stage of the Suit proceedings.

4. Mr. Patil would draw my attention to the fact that the Plaintiff now desires to seek amendment to the effect that he would be entitled to seek a peremptory relief of pre-emption to have a preferential right to the Plaintiff to purchase the Suit property from one of the co-sharer i.e. Defendant No. 1 under the provisions of the Hindu Succession Act. In that regard, the Plaintiff desires to incorporate pleadings as proposed in paragraph No. 4(C) of the Application. Said Application below Exh. 141 has been resisted by Defendants on the ground that such an Application seeking relief of pre-emption filed in the year 2015 if allowed at this stage would certainly be time barred and amenable to the law of limitation. It is seen that Plaintiff has given no apparent reason for not seeking the said relief in the Suit plaint as filed originally and therefore the learned Trial Court has rejected the said Application. Ground of delay and laches is writ large on the face of record. That apart, filing of such Application would unnecessarily

protract and delay the Suit and that is also one of the reason as to why the learned Trial Court has rejected the Application on the ground of change in the nature and cause of action of the Suit claim altogether if, any such amendment is allowed.

5. It is seen that under Article 97 of the Indian Limitation Act, any Suit to enforce a right of pre-emption is required to be filed within a period of one year under part IX of the said Act which is qualified under the caption and heading "Suits relating to Miscellaneous Matters". In that view of the matter and adhering to the provisions of Section 22 read with Article 97 of the Limitation Act, the Application stands rejected. I see no reason as to why the Court should interfere with the reasoned and speaking order given by the learned Trial Court while rejecting the Application filed below Exh. 141. Needless to state that the rights of the Plaintiff to file a fresh Suit as available to the Plaintiff on any cause of action is always available to him in law but subject to the provisions of O. XXIII, R. 1 read with O. XXIII, R. 2 of the CPC. Keeping the contentions of Plaintiff open, the impugned order dated 09.10.2015 is sustained.

6. Since the Suit is of the year 2000, learned Trial Court is directed to decide RCS No. 249/2000 as expeditiously as possible and in any event within a period of six months from today strictly in accordance with law and after allowing both the parties to lead their respective

evidence. Parties shall co-operate with the Trial Court and shall not seek unnecessary adjournment unless it is absolutely necessary in case of any urgency or emergency. Trial Court shall list the Suit on day to day basis and hearing of the trial in the Suit is completed and if the parties derelicted, then the Trial Court is directed by this Court to pass appropriate orders in accordance with law.

7. All contentions of the parties are expressly kept open.

8. With the above directions, Writ Petition stands disposed. Interim Application Nos. 13339/2023, 13338/2023 and Civil Application (St) No. 24563/2019 also stand disposed.

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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2024.08.19
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