

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.25828 OF 2023

Shankar Aai Yallu Mang (since deceased)
through his legal heir Kallubai Pandurang
Gaikwad

.. Petitioner

Versus

Vimal Tukarma Shinde and Anr.

.. Respondents

- Mr. Vikrant Anand Desai, Advocate for Petitioner.

.....
CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 21, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Desai, learned Advocate for Petitioner.
- 3.** Perused the praecipe dated 21.08.2024 and the Writ Petition.
- 4.** By virtue of the impugned order dated 05.11.2022 passed below Exhibits-96 and 97 in Regular Civil Suit No.104 of 2013 seeking the amendment to the suit plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short '**CPC**') filed by Plaintiff in the year 2022, stand rejected.
- 5.** The suit as originally filed by Plaintiff is for possession of the suit property whereas by virtue of amendment, Plaintiff sought declaration that sale deed executed between parties is not binding on

the Plaintiff. Learned Trial Court has considered the Applications and rejected the same and returned its findings in paragraph No.6 onwards. The learned Trial Court has held that not only the amendment is made at much belated stage but it is seen that two different sale deeds have been placed on record by the Defendants with respect to purchase of suit property whereas sale deed which is referred to by Plaintiff and genuineness of which is questioned by Plaintiff by virtue of amendment is a laminated sale deed.

6. That apart, limitation being one of the main reason, the Applications have been rejected. Learned Trial Court has come to a *prima faice* opinion after perusing the sale deed in respect of which the amendment is sought for by Plaintiff and questioned the genuineness of the document which is exemplified by findings returned in paragraph Nos.8 to 11 of the impugned order.

7. The learned Trial Court has further held that in absence any basic pleadings in the suit plaint as also the fact that Plaintiff has acknowledged the execution of sale deed as far back as in 2015, the Application seeking amendment is beyond limitation and cannot be permitted.

8. No fault can be found with the said order, as this Court by its imprimatur cannot substitute the *prima facie* findings arrived at by the learned Trial Court. The impugned order does not call for any

interference, resultantly, the same is sustained.

9. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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