

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7509 OF 2022

Mandakini Jagannath Devkar and Ors. .. Petitioners

Versus

Bhiku Hari Devkar (since deceased) through
legal heirs Sitabai Raghunath Kashid and Ors. .. Respondents

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- Mr. Shailesh Dhananjay Chavan, Advocate for Petitioners.
- Mr. Kirankumar Phakade, Advocate for Respondent Nos.1A, 1B, 3 to 5 and 7 to 9.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 29, 2024

P.C.:

1. Heard Mr. Chavan, learned Advocate for Petitioners and Mr. Phakade, learned Advocate for Respondent Nos.1A, 1B, 3 to 5 and 7 to 9.

2. The present Writ Petition takes exception to order dated 12.12.2019 passed in Application filed below Exhibit-89 in Regular Civil Suit No.91 of 2006. The Application is filed under Order VI Rule 17 of the Civil Procedure Code, 1908 (for short '**CPC**') to effect a substantive amendment.

3. Briefly stated Plaintiff filed suit seeking declaration of entire Gat Nos.241 and 50% in Gat No.415 for himself *qua* and against Defendant Nos.1 and 2 who are his brothers/relatives. Mr. Chavan has informed the Court that ancestral properties between parties were

apportioned by an oral agreement effected in the year 1996 whereby Gat No.241 entirely and 50% of Gat No.415 was given to Plaintiff and Gat No.223, Gat No.400 and part of Gat No.415 was given to the Defendant Nos.1 and 2 who are his real brothers.

4. On the above premise, suit is filed.

5. When suit is filed in the year 2006 sisters of Plaintiff and Defendant Nos.1 and 2 are not impleaded as parties but pursuant to amendment Application filed in 2019, sisters are now sought to be impleaded. This is not the only amendment sought, rather record reveals that substantial portion of the suit property in respect of all four Gat numbers are already sold by Defendant Nos.1 and 2 to third parties. Hence, there are 16 Defendants rather proposed Defendants which shall now be arrayed as Defendants as sought for by the Plaintiff. Consideration which weighed with the Trial Court while dismissing Application for amendment has been adequately noted and reasons are given in paragraph Nos.9 and 10 of the order.

6. It is seen that the facts about which substantive amendment is sought in 2019 were already to the knowledge of Plaintiff i.e. Plaintiff was already seized with the fact about subsistence and existence of sale agreement dated 15.05.2006 executed between Defendant No.1 and Defendant No.10. Not only this, Plaintiff has infact in one of his pleading in Application dated 13.07.2017 made

before the Trial Court has acknowledged the above fact of the sale deed which clearly shows that Plaintiff did have knowledge of the sale deed in the first instance itself. Despite that the same was not challenged.

7. Learned Trial Court has held that challenge to the said sale deed between Defendant No.1 and Defendant No.10 now sought to be made by Plaintiff after a hiatus of 13 long years without giving any explanation for the same whatsoever cannot be allowed. Trial Court held that this is not a case where the registered sale deed was not to the knowledge of the Plaintiff. Learned Trial Court has held that despite having knowledge, Plaintiff did not take any steps for years together and now seeks to implead the third party as also challenge the sale deed between Defendant Nos.1 and 10. By virtue of the present amendment, Plaintiff also seeks an embargo on Defendant No.15 and Defendant No.16 to preclude them from sale of some of the ancestral property which had come to the share of the Defendant Nos.1 and 2 and which was subsequently sold to them. Record indicates that some of these properties were even mortgaged and they have turned into NPAs and Defendant Nos.15 and 16 now have taken steps to publicly auction these very properties.

8. Considering the above Application filed on 12.12.2019 seeking such a substantive amendment in respect of substantive rights

created in favour of several parties and most of the properties not been part of the suit plaintiff cannot be allowed. Undoubtedly it changes the nature of the entire suit proceedings. This is because the principal prayer of the Plaintiff though may be for declaration but same is on the basis of partition as prayed for by the Plaintiff between himself and Defendant Nos.1 and 2 only.

9. In view of the above findings, I am inclined to uphold order dated 12.12.2019 and the same is sustained. Writ Petition fails.

10. In view of the above, it is directed that suit proceedings in RCS No. 91 of 2006 be expedited by the Trial Court as expeditiously as possible and decided within a period of one year from today.

11. Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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