

Vinay Khadpe
(P.S.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6650 OF 2014

Sau Nagratan Ashok Kangokar

.. Petitioner

Versus

Smt. Hirabai Baurao Lokhande
since deceased through Lrs.

Pramod Baburao Lokhande and ors.

.. Respondents

-
- None appears for the Petitioner.
 - Mr. Vinayak Ramesh Kumbhar, Advocate for the Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 18, 2024

P.C.:

- 1.** None appears for the Petitioner.
- 2.** Heard Mr. Kumbhar, learned Advocate appearing for the Respondents.
- 3.** It is an unfortunate thing that the order under challenge dated 7 March 2014 is passed by the learned trial Court at the time when the entire trial was over and the suit originally filed in 2010 was at the stage of final arguments. Ideally, the issue ought to have been looked into and decided by this Court then and there itself, but ten years have passed thereafter. None appears for the Petitioner. Petition is for final hearing. It cannot be prolonged further.
- 4.** Mr. Kumbhar, learned Advocate appears for the Respondents. He has argued on behalf of all Respondents as to how

the impugned order dated 7 March 2014 which is at exhibit G – page 47 to the Petition is correctly passed and maintainable and the Petition deserves to be dismissed.

5. With his able assistance, I have perused the impugned order and also the record and pleadings of the case.

6. It is seen that Application for amendment of plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908 was filed at the time of final arguments. Amendment Application was to the effect that in the Suit filed by the Plaintiff seeking declaration of title and challenge to Sale Deed dated 17 July 2007, amendment is sought for impleading a prayer seeking possession. Plaintiff's case in the Suit was that they were in possession. Trial was over. Now an amendment is sought to the extend of introducing a prayer clause that if the Court found that possession of the suit property was not with the Plaintiff and with the Defendant, then possession of the suit property should also be directed to the handed over to the Plaintiff.

7. Learned trial Court considered the Application as also certain case laws and opined that in order to decide the real nature of controversy, the relief of allowing the supplementary / additional prayer proposed to be introduced by the plaintiff may be permitted since it was only a consequential relief. The learned trial Court held that by allowing such a proposed amendment it would *subserve* the

ultimate cause of justice.

8. I have perused the suit plaint and averments made therein. I have also perused the Application filed below Order VI Rule 17 of the Code of Civil Procedure, 1908 which is at exhibit E – page 43 to the Petition. From perusal of the above pleadings, it is clearly seen that it was plaintiff's case that all along that possession of the suit property was always with the Plaintiff and it only daunted upon the Plaintiff after completion of the entire trial at the time of final arguments that there would now be a question mark on the issue of possession. This happened only after the trial and written action is over. Therefore, the Application is filed by the Plaintiff below exhibit 48 seeking the proposed amendment. It is clear and evident on the basis of the record that this Application is filed only after ascertaining the strength of the evidence of the parties which they led in the trial. Such an amendment ought to have been incorporated only at the first instance before commencement of trial by the trial Court. Merely by giving a reason that the Application filed by the Plaintiff would minimize further litigation between the parties cannot be a reason to allow the amendment.

9. Apart from the issue of substantive delay, due diligence ought to also have been looked at by the learned trial Court and by opining that due diligence is discretionary and not mandatory and

allowing such an amendment, in my opinion, will allow the Plaintiff to change the nature of the reliefs prayed for in the suit proceedings. I do not subscribe to the reasons given by the trial Court in paragraph 12 of the impugned order dated 7 March 2014 as also imposing costs for allowing the Application for amendment. Relief of possession cannot be allowed in this fashion if it was all along pleaded that possession was always wit the Plaintiff. Allowing such an amendment at this stage will entail framing of a new issue, evidence and witness action. This cannot be permitted once the trial is over.

10. For the aforesaid reasons, Writ Petition deserves to be allowed. The impugned order dated 7 March 2014 is quashed and set aside. Learned trial Court is directed to hear the final arguments in Special Civil Suit No.426 of 2009 within a period of four months from today and pass an appropriate decision thereon in accordance with law.

11. Parties are directed to remain present before the learned trial Court along with an authenticated copy of this order on 24 January 2024 at 10.30 am for fixing a schedule for final hearing of the Suit in view of the enormous delay that has taken place.

12. Writ Petition is allowed in the above terms.

[MILIND N. JADHAV, J.]