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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11270 OF 2015

Ashok Parasu Chavan and Anr.

.. Petitioners

Versus

~~Parasu Kondiba Chavan~~

(Since Deceased) Through Lrs. And Ors.

.. Respondents

-
- Mr. Shashank C. Mangle a/w. Hamid D. Mulla, Advocates for Petitioners.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 09, 2024.

P.C.:

1. Heard Mr. Mangle, learned Advocate for Petitioners. None appears for the Respondents.

2. Notice issued by the Court has been served on the Respondents as per remark dated 04.01.2024. The remark “re-issue notice on Respondent Nos.7 and 10” as per the Bailiff Report also stands duly served.

3. The order impugned in the present Writ Petition is passed below Exhibit “96” in R.C.S. No.42 of 1999 on 21.07.2015. Regular Civil Suit is of the year 1999. Suit has been filed for partition and possession of the Plaintiffs share in the ancestral property. I have also considered the order passed on 09.12.2015. It is an irony that for the

past 9 years this Writ Petition has remained pending on the record of the Court.

4. The Plaintiffs filed Application below Exhibit “96” seeking amendment to the Suit plaint in view of subsequent developments seeking impleadment of the subsequent purchasers as Defendants in the Suit proceedings and sought an amendment to that effect.

5. It is seen that none of the Defendants except Defendant No.11 appeared before the learned Trial Court and the Advocate for Defendant No.11 submitted that suitable orders be passed.

6. Though the Suit has been filed in the year 1999 and the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short “**CPC**”) has been inserted subsequently, it needs to be considered whether the amendment sought would satisfy due diligence and if that is satisfied, the learned Trial Court is within its discretion to consider the said amendment.

7. In the present case, admittedly shares belonging to certain Defendants have been alienated and transferred in favour of third parties after filing of the Suit in 1999. These third parties are sought to be impleaded in the Suit proceedings. It is further seen that subsequent developments and events have all taken place pursuant to the filing of the Suit proceedings. The only reason which is attributed for rejection of the Application by the learned Trial Court is that there

has been a delay in filing the Application below Exhibit “96” and nothing more. However, such reason for rejection of the Application cannot be granted considering the purpose of the amendment.

8. Admittedly, the subsequent developments and alienation of part of the Suit properties have taken place and such amendment would be absolutely necessary to adjudicate the *lis* between the parties qua the suit property, since it would otherwise lead to multifarious litigation by those very third parties to protect their interest in the portion of the Suit properties.

9. It is agreed that due diligence of the party has to be verified in the facts and circumstances of each case and merely because there is no adequate reason given in the Application as to why the impleadment Application and amendment Application was not preferred earlier in point of time when the alienation/transfer had taken place to these third parties, cannot be the reason for the Application to be rejected.

10. The learned Trial Court in the same breath has also construed that the subsequent developments will have to be liberally considered and allowed to be inserted, but has nevertheless dismissed the Application. One thing is certain that alienation of part of the suit property has infact taken place. In that view of the matter, the Application below Exhibit “96” ought to have been allowed rather than

dismissed in the interest of justice.

11. In view of the above, impugned order dated 21.07.2015 is quashed and set aside. Resultantly Application below Exhibit “96” in RCS No.42 of 1999 stands allowed.

12. The learned Trial Court is directed to permit the Plaintiffs to carry out the amendment within a period of four weeks from today on the production of an authenticated copy of this order.

13. After the amendment is carried out, amended copy of the plaint shall be served on all the Defendants including the newly added Defendants within a period of two weeks thereafter.

14. The Suit shall appear on the record of the learned Trial Court thereafter and appropriate directions will be passed to dispose of the Suit within a period of one year thereafter considering the long pendency of the Suit.

15. With the above directions, Writ Petition is allowed.

[MILIND N. JADHAV, J.]

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