

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13841 OF 2022

Shivtej Aarogya Sanstha through its Treasurer
Mr. Kashiram Mahadev Sakpal

.. Petitioner

Versus

Atmaram Tukaram Bhuvad and Anr.

.. Respondents

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- Mr. Shreyas Sudhir Butala a/w. Mr. Sudhir Sharad Butala, Advocate for Petitioner.
- Mr. Pankaj Das a/w. Mr. Mohan N. Devkule, Advocate for Respondent Nos.1 and 2.

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 21, 2024

P.C.:

1. Heard Mr. Butala, learned Advocate for Petitioner and Mr. Das, learned Advocate for Respondent Nos.1 and 2.

2. The present Writ Petition takes exception to the order dated 15.09.2022 passed by the learned Trial Court in Application filed below Exhibit-198 seeking amendment to the suit plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short '**CPC**'). The suit is originally filed by Atmaram Tukaram Bhuvad and Prakash Tukaram Bhuvad being Plaintiffs versus 15 Defendants seeking removal of encroachment in respect of the suit property / land, possession of the suit property and injunction against the Defendants.

3. Mr. Butala appearing on behalf of Petitioner would submit that Application filed below Exhibit-198 is the fifth amendment application which has been preferred and incidentally the said amendment has been allowed by the learned Trial Court which changes the nature of the suit proceedings completely. However, he would express serious reservation about the learned Trial Court having allowed the amendment in Application filed below Exhibit-198. He would submit that by virtue of the said amendment which is contained in the Application at Exhibit-I, page No.56, Plaintiffs have now sought to seek a declaration that the registered sale deed between the original land owner and the tenant in respect of the suit land registered vide No.2/1978 dated 06.02.1978 be declared as illegal, null and void and wrongful and contrary to the provisions of Maharashtra Tenancy and Agricultural Land, 1948.

4. Apart from the averments now desired to be freshly incorporated in the suit plaint to challenge the registered sale deed dated 06.02.1978, consequential relief to that extent is also sought to be impleaded by the Plaintiffs in the suit plaint as prayer clause (b1). He would submit that the impugned order therefore deserves to be set aside.

5. *PER CONTRA* Mr. Das, learned Advocate for Respondents would submit that the proposed amendment is necessitated and

germane to the cause of action pleaded in the suit proceedings since in the original suit plaint it has been pleaded by the Plaintiffs that the rights of the parties have crystalised pursuant to Mutation Entry No.2051 dated 14.08.1948 and the subsequent registered sale deed dated 06.02.1970.

6. I have perused the unamended suit plaint which is placed at page No.17 as also the amendment and prayer in the amended suit plaint which is at page No.74. According to him the pleadings as enumerated in paragraph No.5 cannot be said to mean that rights of the parties have been crystalised, rather rights of the parties which have been created by virtue of the registered sale deed dated 06.02.1978 are objected to by the Plaintiffs in present suit and by virtue of present amendment, the Plaintiffs now desire to challenge the legality and validity of the registered sale deed dated 06.02.1978. He would submit that the amendment has been allowed to avoid multifarious proceedings between the parties.

7. It is however pertinent to note that the suit has been filed in the year 2013 only. The amendment application has been filed on 26.08.2022. The learned Trial Court while considering the said Application in paragraph No.3 has categorically returned the finding that nothing prevented the Plaintiffs to challenge the registered sale dated 06.02.1978 when the suit was filed originally in the year 2013.

Suit has been filed only in the year 2013 for removal of encroachment, injunction and possession and it is now sought to be converted into a suit seeking declaration by virtue of the amendment application dated 26.08.2022.

8. The learned Trial Court has stated that the only reason for allowing the application is that there should not be multifarious proceedings between the parties and multiple litigations between the parties. This in my opinion is clearly contrary to the provisions of law as also the public policy so as to allow such an amendment in facts of the present case. To balance this reason, the learned Trial Court has awarded cost of Rs.1,000/- in order to balance the convenience between the parties. The amendment has been directed to be carried out within a period of one week from the date of passing of the impugned order dated 15.09.2022. I am informed that the amendment has already been carried out.

9. In the first instance, the application dated 26.08.2022 on the face of record is clearly barred by the provisions of the Limitation Act, 1963. Such an application could not have been taken cognizance of by the learned Trial Court but it is unfortunate that the learned Trial Court has considered the same otherwise merely because there is reference to the registered sale deed dated 06.02.1978 in paragraph No.2 of the suit proceedings. The learned Trial Court has committed

a grievous error in allowing such an application which is nothing but an ingenious way and clever drafting to overcome the bar of limitation and introduce a challenge to a registered sale deed after 45 years and pray for a declaratory relief.

10. There was nothing that could have prevented the Plaintiffs in the first instance to challenge the registered sale deed dated 06.02.1978. However had the Plaintiffs done so, their suit could have been defeated in the first instance only on limitation.

11. Any suit filed for the relief of possession, injunction and removal of encroachment is filed on the basis of title and entitlement of the Plaintiffs. Unless and until the Plaintiffs have title in the suit property a suit for removal of encroachment and injunction cannot be maintainable.

12. In that view of the matter, Plaintiffs' Application filed below Exhibit-198 ought to have been dismissed *in limine*. The learned Trial Court has ventured further by even adding the purchaser of the registered sale deed dated 06.02.1978 to the suit proceedings filed in 2013 in the year 2023. Such a cause of action is clearly an abuse of the due process of law and is impermissible in law. The entire impugned order dated 15.09.2022 is not sustainable and deserves to be quashed and set aside. Accordingly, order dated 15.09.2022 is quashed and set aside. The amendment which has been carried out

pursuant to the order dated 15.09.2022 is directed to be struck off by the learned Trial Court on production of a server copy of this order by the parties.

13. The parties shall appear before the learned Trial Court alongwith a server copy of this order on 26.03.2024 at 10.30 a.m. on which date the learned Trial Court shall fix the schedule for hearing of the Regular Civil Suit No.95 of 2013 which is now directed by this Court to be disposed of as expeditiously as possible and in any event within a period of six months from today. Parties are directed not to seek any unnecessary adjournments nor shall the learned Trial Court give any unnecessary adjournments to the parties unless there is an emergency or exigency.

14. Filing of Application below Exhibit-198 which is the fifth such application seeking amendment is nothing but a sheer abuse of the due process of law. Hence dismissal of the said Application and setting aside of the impugned order cannot be unconditional. Taking cognizance of the same, this Court is of the opinion that Respondents i.e. Plaintiffs before the learned Trial Court are clearly guilty of protracting and causing undue delay in disposal of the Suit, rather their conduct of introducing a challenge to the registered sale deed of 1978 after 45 years itself is an abuse of the due process of law. Therefore this is a fit case for imposition of costs, rather exemplary

costs on the Plaintiffs who are Respondents before me. The Plaintiffs i.e. Respondents are directed to pay costs of Rs. 25,000/- to a notable charity for their act of filing the fifth amendment application to challenge the sale deed executed 45 years ago over the past 10 years which is dismissed by this order as not maintainable at all and causing undue delay in the trial. The costs are directed to be paid to the charity namely **A.K. Munshi Yojana's J.T. Sheth Mandbuddhi Vikas Kendra**, a Special School imparting education and training to the needs of 150 special children in the field of Education (Classes for 6 to 18 years), early intervention (upto 6 years) and vocational training (18 years above) having its school address and building at A.K. Munshi Yojana Chowk, 3rd Panjarapole Lane, C.P. Tank, Mumbai – 400 004 [Contact Nos. 22425513 / 22423654] registered under the Society Registration Act, XXI of 1980 under No. : 387/81 GBBSD and the Public Trust Act, XXIX of 1950 under No. F-6809. RCI Reg. No. 0163. Costs shall be paid by the Respondents within a period of four weeks from today. Mr. Das represents the Respondents and he shall bring this order to their notice immediately.

15. One of the reason for imposing costs on the Respondents (Plaintiffs) is because the pleadings clearly show that the suit filed by the Plaintiffs is clearly protracted by them time and again by taking out repeated applications for amendment. (this being the fifth such

application). Trial Court shall take cognizance of the receipt of payment of costs as directed and continue further with the suit proceedings as directed without any further delay.

16. The impugned order dated 15.09.2022 stands quashed and set aside. Resultantly, Writ Petition stands allowed and disposed in the above terms.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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