

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 910 OF 2024

Sham Baburao Kandekar

.. Petitioner

Versus

Ulka Vitthalrao Bahirat & Ors.

.. Respondents

.....

- Mr. Sandeep Phatak for Petitioner
- Mr. Jaydeep Deo for Respondent Nos. 1 and 2

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 10, 2024

P. C.:

1. Heard Mr. Phatak, learned Advocate for Petitioner and Mr. Deo, learned Advocate for Respondent Nos. 1 and 2.

2. On 01.04.2024, this Court passed the following order:-

" 1. Heard Mr. Phatak, learned Advocate for Petitioner and Mr. Deo, learned Advocate for Respondent Nos. 1 and 2.

2. I have expressed my mind to Mr. Deo that the impugned order deserves to be interfered with by this Court. Briefly stated original Regular Civil Suit No. 63 of 2007 was filed by the Plaintiffs against Defendants which was renumbered as 184/2009. After a comprehensive trial, the Suit was dismissed on 19.11.2015, judgment of which is appended at page Nos. 69-89 of the Writ Petition. Seven issues were framed and tried. Parties led extensive evidence which is clearly seen from the decision of the learned Trial Court. Regular Civil Appeal No. 309 of 2016 was filed on 29.02.2016. Amendment application is moved on 24.01.2023 which is at page Nos. 115-119 of the Writ Petition. By virtue of the amendment Application, a substantive relief in respect of the Suit property in which the original Plaintiffs claimed 1/6th share is now sought to be amended to read as 1/4th share on the basis of change in circumstances and oversight on behalf of the Plaintiffs while recording the pleadings and the facts having not been properly pleaded by their then Advocate. These three grounds are enumerated in the Application seeking amendment in paragraph Nos. 2, 4 and 5 which I have perused.

3. Prima facie I am of the opinion that the amendment sought for in the Application is sans due diligence. The grounds on which the

amendment is sought cannot be allowed nor they can ever be countenanced. Mr. Phatak would submit that allowing the amendment Application and reopening of the entire Suit proceedings and a fresh trial is nothing but a sheer abuse of the due process of law by Appellants. The impugned order at page Nos. 123-124 passed in Application below Exh. 29 not only deserves to be interfered with but deserves to be quashed and set aside. It is an order without giving any reasons whatsoever or even without discussing the tenets of allowing such an impermissible amendment which would completely change the nature of the Suit proceedings as also the actual cause of action which was originally pleaded and have a fresh round of evidence. The reason given by the learned District Court that the proposed amendment is explanatory in nature and it will not change the nature of the Suit deserves to be set aside on the face of record. It is a fashion to state that no prejudice would be caused to the Respondents or Defendants in such a case. There are no reasons ascribed whatsoever and as usual the learned District Court has allowed the amendment subject to costs of Rs. 7000/-. This Court has in a series of orders and judgments delineated that allowing Application for amendment under O. VI, R. 17 of the CPC should not be in such a casual manner and merely because heavy costs are awarded it should not be allowed. Awarding costs cannot overcome due diligence in all cases. This is one such example and one such case. The impugned order dated 23.11.2023 at Exh. L does not deserve to be countenanced at all by this Court.

4. Mr. Deo seeks time for taking appropriate instructions. At his request, stand over 4th April, 2024. It is made clear that on that date this Petition shall be disposed of at the stage of admission itself.

3. Today Mr. Deo enters appearance for Respondent Nos. 1 and 2.

In his usual fairness he has taken me through the proposed amendment as appearing and proposed in the Application which was filed by Respondents before the District Court in Regular Civil Appeal (RCA). Amendment is contained in paragraph No. 8 onwards of the RCA. After going through the same with the able assistance of both the learned Advocates, it is seen that the amendment as sought for in paragraph Nos. 8(c), 8(d), 8(f), 8(g), 8(h) & 8(i) can be allowed since these amendments are of such a nature that they would not change the context of the cause of action as also the decree passed by the

learned Trial Court. In that view of the matter, the impugned order dated 23.11.2023 is quashed and set aside by directing the District Court to permit the Appellants to carry out amendment to the extent of averments made in paragraph Nos. 8(c), 8(d), 8(f), 8(g), 8(h) & 8(i) as stated in the Appeal. Rest of the amendment is declined.

4. This Court has not expressed its imprimatur on merits of the matter and all contentions of the Appellants before the District Court are expressly kept open.

5. Considering that RCA No. 309/2016 before the District Court is languishing for the last eight years, learned District Court is requested by this Court to determine the same as expeditiously as possible and in any event within a period of six months from today.

6. Amendment shall be permitted to be carried out within a period of one week from today. Copy of the amended Plaint shall be served on the Defendants within a period of one week thereafter.

7. Writ Petition is partly allowed and disposed.

[MILIND N. JADHAV, J.]

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by RAVINDRA
MOHAN
AMBERKAR
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