

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 & 2

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 01, 2024

P. C.:

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.

[MILIND N. JADHAV, J.]

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