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

WRIT PETITION NO. 5817 OF 2024

Shivtej Aarogya Sanstha through
its Treasurer Mr. Kashiram Mahadev Sakpal .. Petitioner
Versus
Atmaram Tukaram Bhuvad & Ors. .. Respondents

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- Shreyash Sudhir Butala, Advocate for the Petitioner
 - Mr. Drupad Patil a/w Mr. Ajinkya Patil, Advocate for the Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : JULY 08, 2024.

P.C.:

1. Heard Mr. Butala, learned Advocate for the Petitioner and Mr. Patil, learned Advocate for Respondents.

2. Writ Petition assails the Order dated 26.02.2024 passed by the learned Trial Court in application filed below Exhibit-236. This application was filed by Plaintiff seeking amendment under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short “CPC”). It is the seventh amendment application filed by Plaintiff after a hiatus of ten years after filing of the suit. Suit is simplicitor filed seeking injunction in the first instance. It is for removal of encroachment by 4 Defendants. By virtue of the present amendment application, Plaintiff desired to carry out substantial impleadment of additional facts as also seek

additional nine reliefs by way of the amendment application.

3. I have perused the proposed amendment which is contained in the application filed below Exhibit-236 on Page Nos.94 to 101 in paragraph No.3 of that application. The said amendment when seen is a substantive amendment which seeks reliefs which are declaratory and for ownership, for determination of boundaries, for partition, for possession and other miscellaneous reliefs. I am well versed with Marathi language and therefore have understood the substantive proposed amendment. Suit was filed 10 years ago for injunction and removal of encroachment only.

4. I have perused the entire amendment and I find that the entire contours and context of the suit proceedings would change if such an amendment is ever allowed in the first instance. It is ironical that the learned Trial Court after noting the objections of the Defendants in paragraph No.5 of the impugned order has allowed such an amendment. It is further seen that the amendment is also sought on the basis of certain orders passed by the Competent Authority in tenancy proceedings under the Maharashtra Land Revenue Code, 1966 for a declaration that Plaintiff is not a tenant of some of the suit property.

5. Mr. Patil, learned Advocate appearing for the Plaintiff would justify passing of the impugned order by stating that though this may

be the seventh amendment application, the previous amendment applications were merely for weeding out typographical mistakes and the present amendment application is a pre-trial amendment application and therefore has been allowed correctly. Record shows that the fifth amendment application which was made by the Plaintiff was in respect of a challenge to registered sale deed of the year 1978 which came to be comprehensively dismissed by the learned Trial Court. The present amendment application is also nothing but an attempt on the part of the Plaintiff to prolong the hearing of the suit proceedings and to convolute and confuse the entire proceedings.

6. Court will have to come down on such litigant with a heavy hand who file, rather keep on filing such repeated applications for amendment for protracting the litigation. It is seen that by virtue of the present amendment, Plaintiff seeks to add nine different reliefs/prayers to the suit proceedings, altogether changing the context and nature of the suit proceedings. Merely by stating that the Plaintiff can be made liable to pay costs for the delay that would be caused in prosecuting the suit proceeding, cannot be an answer to allow such an amendment, which appears to have been done by the learned Trial Court in the present case.

7. The cause of action in the entire amendment ought to have been instituted in the first instance itself by the Plaintiff when the suit

was filed in year 2013. Having not done so, Plaintiff cannot be allowed to improve his suit proceedings at this stage and in this manner. The order dated 26.02.2024 partly allowing the application below Exhibit-236 is clearly unsustainable. The learned Trial Court has rejected the inclusion of the relief pertaining to partition, but has allowed the rest of the proposed amendment as pleaded subject to payment of cost.

8. There is complete non-application of mind on the part of the learned Trial Court while considering the application filed below Exhibit-236 *qua* the cause of action pleaded in the original suit plaint and the proposed amendment. The impugned order is clearly unsustainable and is therefore, quashed and set aside.

9. Resultantly, the application filed below Exhibit-236 is dismissed by the Court.

10. It is seen that when the fifth amendment application was allowed by the learned Trial Court, allowing a declaratory relief to be introduced, this Court came down very heavily on the Trial Court and the Plaintiff and rejected the order passed by learned Trial Court and directed the Plaintiff to pay costs of Rs.25,000/-. I am informed by the learned Advocate Mr. Butala that these costs have not been paid by the Plaintiff till date. Mr. Patil, would inform the Court that he will take appropriate instructions as he at present does not have any instructions on the same.

11. For repeatedly filing amendment applications, that too which are unsustainable in law and delaying the suit trial, the Plaintiff is directed to pay costs of Rs.25,000/- to the Kirtikar Law Library, High Court, Mumbai, for filing such an application, rather a frivolous and vexatious application under Exhibit-236 and attempting to prolong and protract the suit proceedings before the Trial Court. Payment of costs shall be condition precedent. The costs of Rs.25,000/- shall be paid over to the Kirtikar Law Library, High Court, Mumbai within a period of two weeks from today. Since the Suit is of the year 2013, the learned Trial Court is directed by this Court to decide the said Suit as expeditiously as possible and in any event within a period of six months from today.

12. In view of above directions, Writ Petition stands allowed and disposed of.

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
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