



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.2111/2019

Guruprasad S/o Sawalu Patil,
aged about 60 Yrs., Occ. Agricu.,
R/o Bharosa, Tah. Korpana,
District Chandrapur.

... Petitioner

- Versus -

Smt. Sewantabai Wd/o Narayan Uike,
aged about 70 Yrs., Occ. Household,
R/o Bharosa, Tah. Korpana,
District Chandrapur.

... Respondent

Mr. N.M. Kolhe, Advocate for the Petitioner.
Mr. Madur Deo, Advocate with Ms. Disha Chhajed, Advocate for
Respondent.

CORAM: MRS.VRUSHALI V. JOSHI, J.
DATE OF RESERVING THE JUDGMENT : 28.2.2024.
DATE OF PRONOUNCING THE JUDGMENT : 29.2.2024.

JUDGMENT

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. Being aggrieved by the order dated 9.1.2019 passed by the Civil Judge Junior Division, Korpana in Regular Civil Suit No.3/2018 rejecting the review application and the application for amendment of the plaint this petition has been filed.

3. The plaintiff has filed suit for permanent injunction and possession in the year 2000. The defendant appeared and filed her written statement on record. The original suit was dismissed in default in the year 2003. Later on plaintiff filed application for restoration of suit in the year 2005 along with an application for condonation of delay which was dismissed in default. Thereafter the plaintiff has filed the appeal before the District Court which was also dismissed on 7.9.2012 as not maintainable. Thereafter petitioner had filed writ petition before this Court vide Writ Petition No.6587/2013. This Court has condoned the delay and directed the appellate Court to consider the application for restoration of suit. The order was passed on 13.6.2014. Thereafter the trial Court has restored the civil suit on

2.5.2015. The notices were issued by the trial Court. Both the parties appeared before the trial Court and when Advocate of plaintiff inspected the record found that the case is fixed for evidence of plaintiff. The documents 7/12 extract shows that the name of plaintiff is removed as per Mutation Entry No.80 dated 10.6.2005.

4. The plaintiff was not aware about the mutation entry in the name of defendant till restoration of suit in the year 2015. As the suit was dismissed in the year 2003 and later on restored in the year 2015, therefore, the plaintiff filed an application for amendment in the plaint and sought relief of declaration that he is owner of the land Survey No.94, area 5 H 68 R of Mouja Bharosa, Tahsil Korpana, District Chandrapur. The trial Court on 15.10.2018 passed the order rejecting the said amendment application on the ground that the relief claimed by the plaintiff is barred by limitation. After said rejection of application the

petitioner has filed review application on 15.10.2018. The review application was also rejected on 15.10.2018.

5. The petitioner has relied on Sampath Kumar V/s. Ayyakanu and another reported in (2002) 7 SCC 559 in support of his contentions.

6. The learned Counsel for the respondent opposed the petition stating that the claim of plaintiff is barred by limitation. He is claiming relief of declaration after 13 years. The plaintiff was not precluded from instituting fresh suit. The proposed amendment is not tenable and if it is allowed, it will change the nature of suit. Hence prayed to dismiss the petition.

7. The trial Court has discussed Article 58 of Limitation Act as the plaintiff wanted to claim relief of declaration. The relief of declaration of ownership which is covered by Article 58

has to be claimed within 3 years when the right to sue first accrued.

8. The respondent has relied on the observations made in paragraph 7 in the case of T.L. Muddukrishana and another V/ s. Lalitha Ramchadnra Rao (SMT) reported in (1997) 2 SCC 611

in support of her contentions, which read as follows:-

“..... it must be held that for the purpose of limitation, what is material is that the limitation begins to run from the date the parties have stipulated for performance of the contract. The suit is required to be filed within three years from the date fixed by the parties under the contract. Since the application for amendment of the plaint came to be filed after the expiry of three years, certainly it changed the cause of action as required to be specified in the plaint. The suit for mandatory injunction is filed and the specific performance was sought for by way of an amendment. The cause of action is required to be stated initially in the plaint but it was not pleaded. It was sought to be amended, along with an application for specific performance which, as stated earlier, was rejected. Under these circumstances, even by the date of filing of the application, namely, 5-11-1992, the suit was barred by limitation. The high Court, therefore, was right in refusing to permit the amendment of the plaint.”

9. The suit was filed in the year 2000 and it was dismissed in default in the year 2003. On 18.7.2003 the plaint was amended and the relief of recovery of possession was added. At that time the plaintiff had not applied for addition of relief of declaration. The right to sue for declaration was first accrued to the plaintiff on 30.4.2001 which is on the date of filing of the written statement as the defendant has changed the title of plaintiff. At that time the plaintiff has not claimed the relief of declaration. Though the suit was captioned under 'dismissal order' the period of limitation continues to run and it will not stop till it has expired. Even the plaintiff has not claimed for relief of declaration while amending the plaint adding relief of recovery of possession. The trial Court has rightly observed that the relief claimed by the plaintiff is barred by limitation. There are no special or exceptional circumstances to apply the doctrine of "*relation back*" to allow the petition. Considering the above observations interference at the hands of this Court is not

required. Hence the writ petition stands dismissed. Rule is discharged.

(MRS. VRUSHALI V. JOSHI, J.)