



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

58 WRIT PETITION NO. 2125 OF 2024

Shankar Haribhau Chaval
Age : 34 years, Occu. Agriculture,
R/o. Mantha,
Taluka – Mantha, Dist. Jalna.

... PETITIONER
(original plaintiff)

VERSUS

1. Vilas Vitthalrao Chaval
Age : 43 years, Occu. Agriculture,
R/o. Near S.B.H. Mantha,
Taluka – Mantha, Dist. Jalna.

2. Archana Namdev Chaval
Age : 36 years, Occu. Household,
R/o. Near S.B.H. Mantha,
Taluka – Mantha, Dist. Jalna.

... RESPONDENTS
(original defendants)

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- Mr. S. P. Shah, Advocate for the Petitioner
 - Mr. M. M. Joshi, Advocate for Respondent No. 1

CORAM : ROHIT W. JOSHI, J.

DATE : JUNE 30, 2025

ORAL JUDGMENT:

1. The petitioner is the original plaintiff. He has filed a suit being R.C.S. No. 30/2015 *inter alia*, challenging sale deed dated 29.06.2012 under which the suit property is sold by the plaintiff to defendant no. 1. The suit is filed on 25.06.2015. Issues were framed in

the suit on 15.06.2017. On 04.05.2023, the plaintiff filed an application for amendment of plaint vide 'Exhibit 39'. It may be stated that although issues are framed on 15.06.2017, trial of the suit is admittedly not commenced inasmuch as the evidence has not been recorded. It is the case of the plaintiff as is apparent from reading of paragraphs 4 and 5 of the plaint that the defendant no. 1, who is related to him as his cousin had represented him to accompany him to the office of Sub-Registrar to sign a document as an attesting witness and on such representation, the defendant no. 1 obtained signature of the plaintiff on the disputed sale deed. In paragraph 5 of the plaint, it is stated that the plaintiff did not sign the sale deed as executant, either at the foot of the document of sale deed or while completing the formalities with respect to registration of the sale deed. The two signatures appear at internal page nos. 5 and 6 of the sale deed and the accompanying documents which run into 15 pages.

2. The application for amendment as stated above was filed on 04.05.2023. By the said application, the plaintiff intended to incorporate paragraph 5-A and 5-B in the plaint. The learned Trial Court has rejected the application for amendment *vide* order dated 08.11.2023. This order rejecting application for amendment is subject matter of challenge in the present petition.

3. As regards paragraph 5-A, perusal thereof will demonstrate

that the plaintiff is referring to opinion allegedly obtained by him from two hand writing experts who according to the plaintiff have opined that the disputed signature on the alleged sale deed is not of the plaintiff. This is an aspect of evidence. The fact that plaintiff has obtained opinions from some hand writing expert is not required to be pleaded. It will be open for the plaintiff to lead evidence of hand writing expert even without pleading the said facts in the plaint. It will however be pertinent to mention that the plaintiff had filed separate application for calling original sale deed from the record of R.C.S. No. 30/2015. This application is rejected by the learned Trial Court vide order dated 08.11.2023 and the said order is upheld by this Court vide separate judgment passed today.

4. The contention of the learned counsel for the petitioner is that the trial of the suit has not commenced and the amendment which is sought is necessary for just and proper adjudication of the suit. He contends that the plaintiff is only referring to opinions of hand writing experts in paragraphs 5-A of the proposed amendment. Likewise, with respect to paragraph 5-B, the contention is that after purchasing the suit property vide sale deed dated 29.06.2012. Respondent No. 1 has immediately sold the same to defendant no. 2 *vide* subsequent sale deed dated 07.11.2012. It is the contention that defendant no. 2 is a close

relative and rather a family member of defendant no. 1 and that the subsequent sale deed dated 07.11.2012 is executed only in order to defeat the claim of the plaintiff. Learned advocate contends that defendant no. 2 was a party to the suit since the inception of the said suit. He contends that as per sale deed executed in favour of defendant no. 1 was challenged however, the prayer clause did not specifically refer to the subsequent sale deed dated 07.11.2012.

5. Per contra, the learned advocate appearing for the respondents - defendants strongly contends that pleadings sought to be incorporated in paragraph 5-A are false and incorrect to the knowledge of the plaintiff himself, inasmuch as the reports are not obtained by the plaintiff but by his father. He points out that the present suit is filed in collusion with his father, and to substantiate this statement, he draws attention to the fact that the father has also filed suit challenging the same transaction being R.C.S. No. 38/2013. Apart from this, the learned advocate for the respondents draws attention to the statement in paragraph 5-A, which refers to the dates of opinions of hand writing experts, which are 09.03.2015 and 26.05.2015 with statement in paragraph 5 in the plaint according to which the plaintiff got knowledge about the disputed sale deed for the first time in the month of June 2015. As regards 5-B, the learned advocate for the respondents refers to

the same statement in paragraph no. 5 of the plaint to point out that the plaintiff was aware about the sale deed in favour of defendant no. 2 prior to filing of the suit and has chosen not to challenge the same. He submits that a valuable right is now vested with defendant no. 2 with passage of time that challenge to her sale deed is barred by limitation and that the statutory right cannot be divested by allowing the application for amendment.

6. The learned advocate for the respondents contends that the plaint suffers from an inherent lacuna of not challenging title of defendant no. 2 and that after an inordinate period of eight (08) years the said lacunae should not be allowed to be filled up. The learned advocate also contends that the plaintiff has utterly failed to show due diligence warranting rejection of the petition.

7. As regards paragraph 5-B, the undisputed facts of the case will demonstrate that according to the plaintiff he was aware about the subsequent sale deeds in favour of defendant no. 2. It is apparent from the plaint that the prayer clause does not include any challenge to the subsequent sale deed dated 07.11.2012 executed by defendant no. 1 in favour of defendant no. 2. However, it is also clear that defendant no. 2 is a party to the suit since the beginning. It is also apparent from the prayer clause that the sale deed of vendor of defendant no. 2 i.e. sale

deed executed in favour of defendant no. 1 is challenged by the plaintiff. Having regard to these circumstance in my considered view, it will be expedient to permit the plaintiff to incorporate paragraph 5-B in the plaint so as to raise a specific challenge to subsequent sale deed dated 07.11.2012. However, it is also necessary to keep the point of limitation open. Whether the amendment will relate back to the date of filing of the suit or not as is also a point, which is kept open to be addressed before the learned Trial Court at the stage of final arguments.

8. As regards the contention of the learned advocate that inherent lacuna in the plaint is sought to be filled up, in the considered opinion of this Court no prejudice will be caused to the respondents by permitting the amendment, since the point of limitation as well as the point of the amendment relating back is kept open. Needless to mention that while dealing with such pleas endeavour should be made to ensure that the lis is decided on merits rather than on technical grounds.

9. As regards due diligence, the trial of the suit has not yet commenced and therefore, the proviso to Order VI Rule 17 will not step in. The submission of the learned counsel for respondents is right that there is delay of six (06) years in filing the application for amendment from date of framing of the issues. However, since the trial has not commenced in the considered opinion of this Court the situation can be

addressed by imposing suitable cost.

10. In view of the above, the petition is partly **allowed**. Order dated 08.11.2023 passed by the learned Civil Judge Junior Division, Mantha on application at Exhibit 39 in R.C.S. No. 30/2015 is maintained so far as it relates to rejection of application with respect to proposed paragraph 5-A. However, the said order is set aside with respect to paragraph 5-B. Plaintiff/petitioner is permitted to amend plaint in R.C.S. No. 30/2015 by incorporating paragraph 5-B in the plaint. Keeping the point of limitation as well as keeping the point of the amendment relating back to the date of filing of the suit open. Having regard to the fact that the application for amendment, is filed after a period of around six (06) years from framing issues. Cost of Rs. 10,000/- is imposed on the petitioner.

11. Civil applications, if any, stand **disposed of**.

[ROHIT W. JOSHI, J.]