



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 WRIT PETITION NO. 2931 OF 2024

APPASAHEB SONBA JADHAV
VERSUS
BHASKAR DHONDIBA KADAM

Mr. L. V. Sangit, Advocate for the petitioner
Mr. C. V. Dharurkar a/w Mr. Mayur Subhedar, Advocate for the
respondent

CORAM : R. M. JOSHI, J.
DATE : 27th FEBRUARY, 2025

PER COURT :-

1. This petition takes exception to order passed below Exhibit 12 rejecting application for amendment to the plaint filed under Order 6 Rule 17 of the Code of Civil Procedure (for short 'CPC') by plaintiff before the First Appellate Court so also application Exhibit 19 for production of additional evidence.

2. The facts appearing from the record indicate that the petitioner/plaintiff filed suit being R.C.S. No. 343/2012 for declaration of ownership and perpetual injunction in respect of the suit property. This suit came to be dismissed on 04/03/2020. R.C.A. No. 58/2020 was preferred against the said dismissal. During the pendency of the appeal application Exhibit 12 is filed by the plaintiff for amendment of the plaint contending that there is order passed by Tahasildar on 27/02/2021,

wherein possession of plaintiff over the suit property is accepted. Thus, to bring on record subsequent events by way of amendment to pleading, application was filed. Similarly another application came to be filed under Order 41 Rule 17 of the CPC being Exhibit 19 for production of additional evidence. Both applications are rejected by the Trial Court, hence this petition.

3. Learned counsel for the petitioner has drawn attention of the Court to the fact that the Trial Court has not made any observations that the amendment is irrelevant for decision of case. Apart from this it is his contention that once it is accepted that there are subsequent events, the amendment ought to have been allowed without going into the merits of the same. In so far as rejection of application Exhibit 19 is concerned by relying upon the judgment of Hon'ble Supreme Court in case of ***Union of India Vs. Ibrahim Uddin and Ors. (2012) 8 SCC 148***, it is submitted that the application under Order 41 Rule 17 of the CPC ought not to have been entertained muchless rejected at any stage prior to the final hearing of appeal.

4. Learned counsel for the respondent supported the impugned orders. It is his contention that in paragraph 8 of the order passed below Exhibit 12 the First Appellate Court has taken into consideration the fact that the amendment is not bonafide and same will cause prejudice to the

respondent. In respect of order passed below Exhibit 19 he drew attention of the Court with observations that the application for additional evidence could be considered at the stage of final hearing of the appeal.

5. There cannot be any dispute made with regard to the fact that in order passed below Exhibit 12 the learned First Appellate Court has observed that the amendment sought in respect of the subsequent events. No dispute about the same seems to have been made by the respondent that original defendant in this regard. In the entire order there is no whisper about the amendment being not relevant for decision of case. The First Appellate Court has observed that application is not bonafide, however, it has ignored the fact that the order sought to be incorporated in the plaint by way of amendment has been passed after the dismissal of the suit. Thus, malafides could be attributed to the petitioner/plaintiff in moving application for amendment. Apparently subsequent events sought to be brought on record are relevant for decision of case. In any event it was not open for the First Appellate Court to decide correctness of amendment at this stage or entitlement of the plaintiff of any relief, on the basis of the same. Suffice is to say that once there are relevant subsequent events, it was incumbent on the part of the First Appellate Court to allow the amendment to the plaint. Hence,

order passed below Exhibit 12 rejecting the same cannot sustain and same stands get aside. Application Exhibit 12 is allowed. Amendment be carried out within four weeks. Respondent to get opportunity of filing written statement to amended plaint.

6. Hon'ble Supreme Court in case of *nion of India Vs. Ibrahim Uddin and Ors.* (supra) has held that application under Order 41 Rule 27 of the CPC must be decided at the final hearing of the appeal and not at any stage prior thereto. As such the rejection of application Exhibit 19 is also not justified. Hence, this order also deserves to be set aside. Application Exhibit 19 is relegated to the First Appellate Court for its decision at the final decision of the appeal.

7. Hence, petition stands allowed in above terms.

(R. M. JOSHI, J.)

ssp