



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3348 OF 2024

Arun Madhavrao Deshmukh

VERSUS

Ashok Madhavrao Deshmukh And Others

- Mr. K. P. Rodge h/f Mr. K. B. Shinde, Advocate for the Petitioner
- Mr. A. D. Shinde, Advocate for the Respondent Nos.1 to 3

CORAM : R. M. JOSHI, J

DATE : FEBRUARY 11, 2025

PER COURT :

1. This Petition takes exception to order passed below Exh. 36 in RCS No. 108/2018 dated 07.07.2023 whereby application filed by Plaintiffs for amendment to the plaint came to be allowed.

2. Petitioner is the Defendant and is aggrieved by above order. It is the case of the Defendant that prior to present application, an application vide Exh. 18 came to be filed for the seeking amendment to the plaint. This application came to be rejected by order dated 25.01.2022 by Trial Court.

3. Learned Counsel for Petitioner submits that

this order has not been challenged by the Plaintiffs, as such, has attained finality. It is his submission that application which is moved by suppressing facts ought to have been rejected. It is also submitted that the alleged execution of sale deed is of May, 2018 whereas the application is filed after about 5 years thereof. In such circumstances, Trial Court was not justified in allowing the application.

4. Learned Counsel for Respondents submit that the bona fides of the Respondents can be seen from the fact that the earlier application Exh. 18 was filed immediately within 2 months from the transaction in question. It is his submission that the Trial Court did not pass any order on merit while rejecting the said application but the same was refused only for the reason that there was no supporting material to justify allowing of the amendment.

5. Undeniably, suit is for partition. Parties are brothers and sisters. Application 18 filed by Plaintiffs on 10.07.2018 indicates that immediately after the sale deed dated 11.05.2018 executed between Defendant Nos. 1 and 4, amendment was sought by

Plaintiffs. The order passed by the Trial Court dated 25.01.2022 does not show that the said amendment was rejected on merit. It was not accepted for the reason that there was no support material at the relevant time. Now, admittedly, Exh. 36 is filed along with copy of the concerned sale deed. In this backdrop, the Trial Court has allowed the application by passing order impugned.

6. Having regard to the nature of suit, undeniably the amendment sought is relevant for determination of issues involved in the suit. Even from order dated 25.01.2022 it does not reflect that same rejected on the ground that the amendment is not relevant. In such circumstances, there would not have been justification for the Trial Court to reject Application Exh. 36 if some material is placed on record to justify the said amendment.

7. The Trial Court has also imposed cost of Rs. 1,000/- payable to the Defendants. Since the amendment has been allowed after about 5 years of the accrual of the cause of action, this Court finds it appropriate to enhance the said cost. Hence, Application Exh. 36

stands allowed subject to payment of cost of Rs. 3,000/- to the Defendants. Cost be paid before Trial Court on the next date of the hearing i.e., 18.02.2025. Payment of cost is the pre-condition before effecting amendment.

8. In view of above, Petition stands disposed of.

(R. M. JOSHI, J.)