



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

26 WRIT PETITION NO. 7263 OF 2024

SANJAY MADHAV BORUDE AND OTHERS
VERSUS
SHIVAJI DADASAHEB BORUDE AND OTHERS

.....

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for the Petitioners
Mr. S. N. Kendre, AGP for the respondent/State
Mr. P. F. Patni, Advocate for respondent Nos.1 to 6.

CORAM : R. M. JOSHI, J.

DATE : 21st APRIL, 2025

PER COURT :-

1. This petition takes exception to the order passed by the Trial Court below Exhibit 63 in R.C.S. No. 81 of 2020, whereby application filed by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure (for short 'CPC') for amendment of the pleadings came to be allowed.
2. Petitioners are original defendants. They have a grievance against the Trial Court that after commencement of trial and more particularly when the evidence was at advanced stage, application for amendment to the plaint came to be allowed.
3. Learned counsel for the petitioners has drawn attention of the Court to the written statement filed by the defendants on 10th December, 2020 wherein specific plea was raised with regard to the

execution of will by Dadasaheb Sukhdev Borude on 17th January, 2017 in favour of the defendants. It is his submission that apart from this disclosure to the plaintiffs, the revenue proceedings indicate that plaintiffs had knowledge of the said will deed, however, no steps were taken to take exception thereto by causing amendment to the pleadings. It is his submission by relying upon the judgment of Hon'ble Supreme Court in case of *Basavraj Versus. Indira and others, (2024) 3 SCC 705* that unless due diligence is shown, it is not open for an party to seek amendment to the pleadings after commencement of trial.

4. Learned counsel for the respondents/plaintiffs supported the impugned order by referring to the findings of fact recorded by the Trial Court in the impugned order. According to him though written statement was filed, the document i.e. will deed has appeared before the Court for the first time on 16th December, 2022 i.e. after the commencement of the trial. Thus, it is his submission that in respect of the subsequent event, the question of applying the principles of due diligence as per the proviso Order 6 Rule 17 of CPC does not apply.

5. There cannot be any dispute to the proposition sought to be canvassed by the learned counsel for the petitioner that a party who seeks amendment to the pleadings after commencement of trial is required to prove due diligence. However, in the present case as

recorded by the learned Trial Court in the impugned order, the document has surfaced for the first time on 16th December, 2022. Admittedly, by this time the trial has commenced. Thus, this is the case wherein the amendment is sought on the basis of subsequent event to the commencement of trial.

6. Though it is sought to be argued by the learned counsel for the petitioner that in the revenue proceedings knowledge of the will in question could be attributed to the respondents/plaintiffs, but *prima facie* this Court is unable to find any support thereto from the material on record.

7. Learned Trial Court has recorded finding of the fact with regard to the document in question being placed on record for the first time on 16th December, 2022. In the exercise of writ jurisdiction, it is not open for this Court to disturb the said findings on the basis of submissions unsupported by any material/documents.

8. Having regard to the peculiarity of the facts involved in the present case, the application for amendment filed after commencement of the trial is rightly entertained and allowed by the Trial Court and having regard to the stage of trial, it came to be allowed subject to imposition of cost. This Court, therefore, finds no perversity in the said

order. Petition therefore fails.

9. Needless to say that the defendants are permitted to file written statement so also parties are permitted to lead evidence in this regard.

10. Learned counsel for the petitioner seeks liberty of this Court to lead evidence before the Trial Court with regard to the previous knowledge of the plaintiffs of this documents prior to up to 16th December, 2022. It would be open for the petitioner to prove this contention before the Trial Court in accordance with law.

(R. M. JOSHI, J.)

ssp