



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

26 WRIT PETITION NO. 8611 OF 2022

KANTABAI GOVINDRAO TELANG
VERSUS
DHONDIRAM ANNA CHAVAN AND ANOTHER

Ms. Madhaveshwari S. Mhase, Advocate for the Petitioner

CORAM : R. M. JOSHI, J.

DATE : 3rd FEBRUARY, 2025

PER COURT :-

1. This petition takes exception to the impugned order dated 09/06/2022 passed by the Trial Court in R.C.S. No. 319/2018, whereby application (Exhibit 15) filed by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure (for short 'CPC') for amendment to the plaint came to be rejected.

2. Petitioner/plaintiff filed suit for recovery of the possession of the suit property from defendants. There is averment in the plaint that in the month of May, 2010 when plaintiff went to the suit property he found that the defendants have encroached upon the suit property. There is specific pleading in the plaint that the defendants have no right title or interest in the suit property and hence suit for relief of possession of the suit property came to be filed against the defendants.

3. Defendants filed written statement by contending that the plaintiff executed registered sale deed dated 18/10/2003 in respect of

the suit property by paying the consideration and since then defendants are in possession thereof. It is also claimed by the defendants that on the basis of the said sale deed their names are also mutated in the revenue record in the year 2003 itself.

4. In the back drop of this pleadings application (Exhibit 15) came to be moved by the plaintiff on 14th August, 2019 where it is claimed that from the written statement filed by the defendants it is revealed to the plaintiff about existence of registered sale deed bearing No. 5186/2003. It is claimed by the plaintiff that plaintiff never purchased stamp No. 281 from the vendor nor executed the said document nor was present before the registration authority. With these averments are sought to be incorporated in the plaint with ultimate relief for cancellation of the sale deed in question. This application is opposed by the defendants. It came to be rejected by the Trial Court on two counts, firstly, that the application is filed after the commencement of the trial i.e. after framing of the issues without showing due diligence and secondly, that the nature of the suit is going to be changed if the amendment is allowed.

5. Learned counsel for the petitioner submits that it was not open for the Trial Court to go into the merit of the amendment and therefore the Trial Court was not justified in making observations with

regard to change in nature of the suit with the said amendment. She also argued that immediately after filing of the written statement the application (Exhibit 15) came to be moved under Order 6 Rule 17 of the Code of Civil Procedure and that due diligence can be seen of the plaintiff.

6. Learned counsel for the respondents submits that the plaintiff is executed the registered sale deed and as such it is not now open for the plaintiff to seek cancellation thereof after the period of limitation for seeking such relief has expired. He drew attention of the Court to the finding recorded by the Trial Court in the impugned order to the effect that the nature of suit is owing to be changed.

7. No doubt there is substance in the contention of the learned counsel for the petitioner/plaintiff that the merit of the amendment cannot be gone into at the stage allowing the amendment. However, at the same time the Court is required to see as to whether the amendment sought to be made and relief asked pursuant to the such amendment is within limitation or not. Here in this case the sale deed relied upon by the defendants is a registered sale deed dated 08/02/1995. Plaintiff is the executant thereof. Though now it is sought to be contended by the plaintiff that he has not executed the sale deed, the such suit for cancellation of the registered sale deed is certainly barred by limitation.

This certainly requires consideration by the Court while permitting amendment though the merit of the amendment can not be gone into at this stage. The test for permitting amendment of this nature would be, as to whether the plaintiff would be permitted to bring a fresh suit on the cause of action sought to be amended or not. If plaintiff cannot file a suit due to legal disability like bar of limitation, the same cannot be permitted by way of amendment.

8. Apart from this, this is a matter of fact that the initial suit is filed for the possession with specific averment that the defendants have no right in the suit property and it is case of trespass of the defendants over the suit property. The amended asked would certainly change nature of suit as not it is contended by the plaintiff that there was registered sale deed however the same is required to be cancelled.

9. The learned Trial Court has rightly taken in to consideration the facts involved in this case and applied correct law, while passing impugned order. For want of perversity, the same does not deserve interference in exercise of writ jurisdiction.

10. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp