



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 14864 OF 2023

Kunda Vitthal Punde

.. Petitioner

Versus

Dnyaneshwar Karbhari Kale and others

.. Respondents

Mr. Sudheer R. Zambare, Advocate for the Petitioner.

Mrs. C. S. Deshmukh, Advocate for Respondent No. 1.

CORAM : KISHORE C. SANT, J.

DATED : 02nd JANUARY, 2025.

P C. :-

. Heard learned advocates for the parties.

2. This petition is filed challenging the order passed by the learned 8th Joint Civil Judge Junior Division, Ahmednagar dated 23.08.2023. The learned trial Judge, by way of impugned order, has allowed the application filed under Order VI Rule 17 of the Code of Civil Procedure and allowed the amendment.

3. The learned advocate for the petitioner Mr. Zambare vehemently argued that the suit was filed in the year 2021 with only prayer to grant specific performance of an agreement dated 17.07.2004 and there was no any other prayer made. By way of application dated

24.02.2023 the plaintiff/respondent herein sought by way of amendment, to add proposed defendant Nos. 2, 3 and 4 and to insert a prayer and averments to the effect of declaration that gift deeds executed by defendant No. 1 in favour of defendant Nos. 2 to 4 are not binding on the plaintiff. He submits that the said relief would change the nature of the suit. The plaintiff was aware of the gift deed dated 26.11.2020. Further cause of action was shown to be the date on which compromise in RCS Nos. 287/2004, 503/2005 and 821/2012 took place. He thus submits that the reliefs are time barred on the date of making an application. The learned Trial Court has specifically observed that the plaintiff was aware of the gift deeds executed in the year 2020 i.e. prior to filing of the suit and still no averments were made in the suit. He submits that the issues are already framed in the suit and thus Trial has already commenced. He submits that the learned Trial Court has committed illegality in allowing such application.

4. The petition is vehemently opposed by the learned advocate Smt. Deshmukh for the respondent No. 1. She submits that the cause of action stated by way of amendment is of the year 2020 and the mutations taken on the basis of gift deeds which occurred in the year 2020. The application was thus within time. The suit was filed in

respect of land Gat No. 95/1 to the extent of middle portion admeasuring 40 R. The gift deeds are in respect of the very same land. Unless the gift deeds are declared to be not binding on the plaintiffs the suit prayer is of no use. It is therefore necessary to get the alleged gift deeds set aside/declared to be not binding on the plaintiffs. The nature of the suit would not be changed by the amendment. So far as the commencement of the trial is concerned, she relies upon the judgment in the case of Mahadeo s/o. Maruti Bhanje Vs. Balaji s/o. Shivaji Pathade & Anr.¹. In the said judgment the Division Bench of this Court by relying upon the judgment in the case of Ajit Narshinha Talekar Vs. Smt. Nirmala Wamanrao Kakade and others² and two other cases that the trial can be said to have commenced only from the date of filing of affidavit in lieu of the examination-in-chief of the witnesses. This Court specifically considered that the proviso to Order VI Rule 17 of the Code of Civil Procedure would come into play only after such a stage. She thus submits that in the present suit though issues are framed, the affidavit in lieu of evidence is not yet filed. She further submits that for effective decision of the suit the amendment is necessary. The learned Trial Judge has rightly considered the application and passed the order. She prays for rejection of the writ petition.

1. 2012 (7) ALL MR 564

2. 2010 (5) Mah.L.J. 481

5. This Court has gone through the impugned order passed by the learned Trial judge and the application filed before the learned Trial Judge. After hearing the parties and going through the impugned order and the petition, it is clear that the prayer was made within limitation period. The gift deeds are of September 2020. The application was filed in February 2023. The gift deeds are in respect of the very same land which is subject matter of the suit. It is necessary to consider binding nature of the gift deeds on the plaintiffs. The learned Trial Court has rightly considered all these aspects. This Court does not find any perversity or illegality in the order passed by the learned Trial Court.

6. In view of the above, this Court is not inclined to interfere with the impugned order. There is no merit in the writ petition and the same deserves to be dismissed. Hence, the following order is passed.

ORDER

. The writ petition stands dismissed.

(KISHORE C. SANT, J.)