

SATISH
RAMCHANDRA
SANGARIN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10831 OF 2023

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SANGAR
Date: 2024.10.11
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1. **Ganpat Bhagoji Kshirsagar**
Aged about : 78 Years, Occupation : Agriculturist,
2. **Vidyadhar Ganpat Kshirsagar**
Aged about : 43 Years, Occupation : Service,
3. **Chandrashekhar Ganpat Kshirsagar**
Aged about : 41 Years, Occupation : Agriculturist,
For himself and Power of Attorney Holder of
Petitioner Nos.1, 2 and 4 to 7, Nos.1 to 3 are
Residing at : Khotacha Mala, Near Railway
Station, adjacent to Kapad gaon, Lonand,
Taluka : Khandala, District : Satara.
4. **Meena Ganpat Kshirsagar @ Meena**
Suresh Shewate, Aged about : 40 Years,
Occupation : Service, R/o. : House No.1203,
Ramdoh Ali, Radhe Apartment, Wai,
Taluka : Wai, District : Satara.
5. **Nilima @ Rajashree Ganpat Kshirsagar**
Nee **Sou. Rajashree Arvind Jamdade**
Aged about : 38 Years, Occupation : Service,
R/o. : Opposite to Satara City Police Station,
Police Vasahat, Satara.
6. **Jyoti Ganpat Kshirsagar**
Nee **Jyoti Mohan Dagade**
Aged about : 37 Years, Occupation : Business,
C/o. : Mohan Mahadeo Dagade, Gala No.8,
Brahmanshahi, Wai, Taluka : Wai,
District : Satara.

7. **Pallavi Ganpat Kshirsagar**
 Nee **Pallavi Somnath Nanaware**
 Aged about : 35 Years, Occupation : Service,
 Office at : Satara District Co-op. Bank Ltd.,
 Branch Phaltan, Taluka : Phaltan,
 District : Satara.
 At present, R/o. : At Post Jadhavwadi,
 Ram Park Apartment, Flat No. 72, ...**Petitioners**
 Taluka : Phaltan, District : Satara. (**Original Defendant Nos.1**
to 3 and 5 to 8)

Versus

1. **Anjana Krushna Jamdade**
 Aged about : 73 Years, Occupation : Agriculturist,
 R/o. : House No.2133, Phule Nagar, Wai, ...**Respondent No.1**
 Taluka : Wai, District : Satara. (**Original Plaintiff**)
2. **Subhadra Ganpat Kshirsagar**
 (Since deceased through Legal Heirs which
 are already on Record). (**deleted vide order ...Respondent No.2**
dated 27th September 2021) (**Original Defendant No.4**)

Mr.Dilip Bodake:-	Advocate for the Petitioners.
Mr.Ajit Kenjale a/w Mr.Sohil Gulabani, Mr.Azharuddin Khan, Mr.Sai Kadam:-	Advocates for Respondent No.1.

CORAM : S. M. MODAK, J.

DATE : 9th OCTOBER 2024

P. C. :-

1. The only issue arisen in this Writ Petition is, whether the trial

Court was justified in allowing the Application filed by the Plaintiff for amendment of the Plaint particularly when the trial has commenced.

2. By consent, the Writ Petition is taken for final hearing at an admission stage.

3. I have heard learned Advocate Shri.Bodake for the Petitioners / Defendant Nos.1 to 3 and 5 to 8 and also heard learned Advocate Shri.Kenjale for the Respondent No.1 / Plaintiff.

4. It is an undisputed fact that the trial has commenced. The issues are also framed on 15th February 2019. It is on Page No.139. It is also undisputed fact that the Plaintiff has entered into the witness-box and she has been cross-examined. The only reason for allowing the Application for amendment is the Plaintiff is aged lady and she is illiterate and and she got the certified copies of the sale-deed recently.

5. The amendment Application is on Page No.156. By way of amendment, the Plaintiff wants to bring on record, how the sale-deeds executed by Defendant No.1 in favour of various persons are not binding on her. The present Petitioners have opposed that prayer on the ground of limitation, so also, on the ground that it does not fit within the proviso to Order 6, Rule 17 of the Code of Civil Procedure, 1908 (“CPC”).

6. The trial Court allowed the amendment as per the order dated 29th April 2023 (Exhibit-64). The reasoning find place in Para Nos.8 and Para No.9. As said above, predominantly, it was allowed because the Plaintiff is an illiterate lady and amendment is required for deciding the controversy between the parties and it is necessary for appropriate and final adjudication of the real controversy.

7. The trial Court is fully aware that this amendment was moved after commencement of the trial and provisions of Order 6, Rule 17 are also quoted in the order.

8. According to Mr.Bodake, there is no due diligence. It is for the reason that the Plaintiff has pleaded about these sale-deeds in Para No.2 of the Plaint and even, in the Written Statement filed by the Defendant No.1, they have taken a plea about non joinder of necessary party (Para No.2) and they have also taken a plea that no declaration is sought about those sale-deeds. (Para No.10).

9. Both of them relied upon few of the judgments.

10. Learned Advocate Mr.Bodake relied upon the observations in case of *Ashok Daga Patil v/s. Daga Yadav Patil and others*¹. The learned Single Judge of this Court has disallowed the amendment on the ground of limitation because if the Plaint is amended, it relates

¹ 2003 (1) Mh.L.J. 686

back to the date of filing of the Suit.

11. Whereas, learned Advocate Mr.Kenjale relied upon the following judgments:-

(i) ***Abdul Rehman and Another v/s. Mohd. Ruldu and Others***²

The Hon'ble Supreme Court has emphasised on allowing the amendment, if it will minimise the litigation. In that case, there was an averment in the Written Statement and on the basis of said averment, an amendment was sought by the Plaintiff. (Para No.12).

(ii) ***Mohinder Kumar Mehra v/s. Roop Rani Mehra and Ors.***³

In that case, the issues were framed and the Suit was fixed for recording of evidence but the evidence is not started. (Para No.10). On this background, an Application for amendment was moved. The amendment pertains to claiming the share in the sale-proceeds received by Defendant No.1. On the basis of these facts, it was allowed and it was observed that "there is a relief sought for declaration of the sale-deed and what is prayed by way of amendment is, only share in the sale-proceeds. That is why, the issue of limitation has to be decided at the time of final trial.

(iii) ***Chakreshwari Construction Pvt. Ltd. v/s. Manohar Lal***⁴

Wherein, the Hon'ble Supreme Court has laid down

² (2012) 11 Supreme Court Cases 341

³ AIR 2017 SUPREME COURT 5822

⁴ 2017 (5) Mh. L. J. 195

certain principles for deciding the amendment Application. (Para No.14). According to Mr.Kenjale, if these principles are considered, the amendment was rightly allowed.

(iv) ***Gurbakhsh Singh and Others v/s. Buta Singh and Another***⁵

Wherein, the amendment in the Plaint was allowed because the Plaintiff could not collect the correct particulars well in time. In nutshell, the due diligence was shown.

12. I have read the documents and observations in the above mentioned judgments but I am of the view that the trial Court ought not allowed the amendment of the Plaint. It is for the reason that the Plaintiff has averred in Para No.4 of the Plaint about the sale-deeds. Those sale-deeds are of 24th August 1999. Another sale-deed is of the same date and third sale-deed is of 6th July 2008. The Plaintiff was very much aware that part of the Suit property is sold by Defendant No.1 to third persons. She was aware about the land sold and the consideration also. She was also aware about the mutation carried out in respect of those lands.

13. It is pertinent to note that Defendant No.1 has taken a clear stand that declaration is not sought about those sale-deeds. It is a matter of record that issues are framed. Even, the Plaintiff has entered

⁵ (2018) 6 Supreme Court Cases 567

into the witness-box. Merely because she is an illiterate lady and merely because she obtained certified copies of those sale-deeds subsequently, how it can be said that she was diligent in prosecuting the Suit and asking for amendment.

14. The test of deciding the real controversy is applicable when the amendment is asked for prior to the commencement of the trial. After commencement of the trial, the only test of due diligence is to be seen. This proviso is added only for curtailing the vexatious amendments. Why it is so, because the parties have taken their positions. If it is so, then they cannot be permitted to take an additional stand which will damage the plea already taken. This is particularly necessary when the Defendants have objected for not praying for certain reliefs. In fact, that was a proper stage for the Plaintiff to take steps for collecting the sale-deeds. Once, the cross-examination is started, I think, the amendment ought not to have been allowed. Furthermore, if we go by the dates of these sale-deeds, it can certainly be said that the amendment is done after a long gap. The Suit was filed in the year 2015 and the amendment is sought in the year 2022. When the dates are clear, this Court can certainly make certain observations about the limitation.

15. Considering the facts, the observations in the judgments relied upon by Mr.Kenjale will not be useful to him. I am inclined to set aside the order. At the most, it can be said that if the Plaintiff succeed in getting a decree in her favour, she can request the Executing Court that the land sold by Defendant No.1 can be adjusted towards towards his share.

16. Hence, following order is passed:-

ORDER

- (i) The **Writ Petition is allowed.**
- (ii) The order dated 29th April 2023 passed by the Court of Civil Judge, Junior Division, Khandala in Regular Civil Suit No.140 of 2015 is set aside.
- (iii) The **amendment Application** filed by the Plaintiff is **dismissed.**

17. In view of the above, **Writ Petition stands disposed of.**

18. A request is made by learned Advocate Shri.Kenjale to stay this order. It is opposed by learned Advocate Shri.Bodake.

19. The operation of this order is stayed for three (3) weeks.

[S. M. MODAK, J.]