

(2001) 05 BOM CK 0006

In the Bombay High Court

Case No : Civil Revision Application No. 72 of 2001

Marcus D"Costa

APPELLANT

Vs

Anand Bhissi Gaonkar and Another

RESPONDENT

Date of Decision : 04-05-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2001) 4 BomCR 825

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : M.S. Sonak, for the Appellant; N.K. Sawaikar, for the respondent No. 2, for the Respondent

Judgement

A.M. Khanwilkar, J.—Notice was issued on 26th April, 2001 to the respondents indicating that the matter will be finally disposed of at the admission stage. Shri N. K. Sawaikar, learned Advocate appears for the respondent No. 2. In spite of service, none appeared for the respondent No. 1.

2. This revision takes exception to the order dated 13th February, 2001 passed by the Civil Judge, Junior Division, Sanguem in Civil Miscellaneous Application No. 2/2001 in Regular Civil Suit No. 23/87. By this order, the trial Court has allowed the application for amendment preferred by the respondent No. 1/ original defendant. By the said amendment, the respondent No. 1 prayed for insertion of prayer Clause (b-b) after prayer Clause (b) in the counter-claim which reads as under:---

"(b-b) for a declaration that the inventory proceedings exhibit P.W. 1/B as far as enlisting the property "ZORIVADDO" bearing Land Registration No. 2957 and Matriz No. 137 and allotting the same to the plaintiff is concerned the same be declared null and void."

3. With regard to the merits of the said amendment, there is no dispute that the Court below has recorded a clear finding that the same is hopelessly barred by

limitation. The learned Advocate for the petitioner, therefore, contends that having recorded such a finding and which has not been challenged, it was impermissible for the trial Court to allow the amendment whereunder the relief claimed was barred by limitation. It is well settled that such an amendment cannot be permitted. In this context, reliance is placed on the decisions in Muni Lal Vs. The Oriental Fire and General Insurance Company Ltd. and another, and Radhika Devi Vs. Bajrangi Singh and others, .

4. Shri M.S. Sonak, the learned Advocate for the petitioner further contends that the intention behind the amendment was only to protract the proceedings, for it was one amongst several other such frivolous applications filed by the respondents.

5. Shri N.K. Sawaikar, the learned Advocate for the respondent No. 2 submits that he has no objection if the impugned order is set aside for the grounds urged by the petitioner.

6. Having considered the submissions advanced on behalf of the petitioner as well as the respondent No. 2, I find no hesitation in accepting the argument of Shri Sonak, learned Advocate that the Court below having recorded a clear finding that the proposed amendment was barred by limitation, it was not open to the Court to allow the amendment in question whereby new relief was sought which was admittedly barred by limitation. In the circumstances, the order passed by the trial Court cannot be sustained in law. The trial Court no doubt observed that by allowing such an amendment, no prejudice could be caused to the petitioner, however, that can be no justification to permit an amendment which cannot be entertained being barred by limitation. It is well settled that the Court cannot entertain a relief which is expressly barred by limitation for it has no jurisdiction to entertain such a relief and it would be against public policy to do so.

7. In the circumstance, this application succeeds and is allowed with no order as to costs. The impugned order is set aside. Rule is made absolute in above terms.