

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.119 OF 2014

Natthu s/o. Sandu Landge,
Age 84 years, occ. Farmer,
r/o. Wakod, Tq. Phulambri,
Dist. Aurangabad

..Petitioner

Versus

1] Polachand s/o. Amarsingh Rajput,
Age 39 yeasers, occ. Business,
r/o. Phulambri, Tq. Phulambri,
Dist.Aurangabad

2] Nimabai w/o. Polachand Rajput,
Age 35 years, occ. Housewife,
r/o. Phulambri, Tq.Phulambri,
Dist. Aurangabad

..Respondents

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Mr.S.R.Deshpande, advocate for petitioner

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CORAM : M.T. JOSHI, J.

DATE : APRIL 28, 2015

PER COURT :

Heard Mr.Deshpande, learned counsel for the
petitioner.

2] None present for the respondents, though served. The judgment of the trial Court would show that the respondents failed to appear in the trial court also.

3] Mr.Deshpande, learned counsel for the petitioner, submits that the suit in the trial Court was filed as per the provisions of Section 6 of the Specific Relief Act, on the basis of earlier possession only and not on title. The trial court, however, processed the same as regular civil suit of title and dismissed the suit.

4] When a query was put as to how, the point that was framed by the trial court, was not tried to be corrected by making an application, Mr.Deshpande submits that as the suit was proceeded *ex-parte*, the point was framed by the trial court at the time of delivery of the judgment itself. He

further submits that as the suit was filed under Section 6 of the Specific Relief Act, the present Civil Revision Application is filed.

5] Reading of the papers, however, would show that the present petitioner has pleaded his ownership and about his source of title as a purchaser of the property on 3rd July, 2010, however, there was no whisper in the plaint, that the suit was filed as per Section 6 of the Specific Relief Act. Therefore, the trial court has framed above point.

6] Considering the fact that the petitioner/plaintiff came with a case that the suit was under Section 6 of the Specific Relief Act and the parties need not plead the law, present Civil Revision Application, needs to be allowed on certain condition that the superfluous pleadings regarding the title be deleted from the plaint and

thereafter, the suit to proceed.

7] In the circumstances, the following order :-

A] Present Civil Revision Application is allowed without any order as to costs.

B] The impugned judgment of the trial court is quashed and set aside. Instead, the suit to proceed on merit, on the condition that the present petitioner/plaintiff amends the plaint by titling the same under Section 6 of the Specific Relief Act and deleting the pleadings regarding the title as pleaded, by him by way of an amendment.

[M.T. JOSHI, J.]