

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

WRIT PETITION NO.11929 OF 2014

Ismail s/o Wahab Qureshi,
Age 36 years, Occu.Business,
R/o Room No.02, Sholapurki Chall,
Ranisati Marg road, Pathan Wadi,
Malad East, Mumbai

..Petitioner

Versus

1. Kazi Musa Hussain s/o
Mehboob Hussain,
Age 55 years, Occu.
Contractor, R/o Take Nagar,
Ambajogai road, Dist.Latur
2. Sunil Dattatray Chawan,
Age 39 years, Occu.Service,
R/o Datta Colony,
Kailash Nagar,
District Aurangabad
3. Shakeel Peer Mohammed
Qureshi, Age 48 years,
Occu.Business, R/o Nikdak,
Taluka Badanapur,
District Jalna
4. Yasin Pir Mohammed
Qureshi, Age 50 years,
Occu.Business, R/o Nikdak,
Taluka Badanapur,
District Jalna
5. Dattatraya Prabhakar Dhumal
Age Major, Occu.Agriculture,
R/o Babra, Taluka Vaijapur
District Aurangabad.
6. Parasram Prabhakar Dhumal,
Age Major, Occu.Agriculture,
R/o Babra, Taluka Vaijapur,
District Aurangabad
7. Haroon s/o Dada Miya Qureshi
(died through following L.Rs.)

- 7A. Ahemadibee w/o Haroon Qureshi, Age 50 years, Occu.Household,
- 7B. Saheel s/o Haroon Qureshi, Age 30 years, Occu.Labour
- 7C. Sofiyan Haroon Qureshi Age 25 years, Occu.Nil
- 7D. Zuber s/o Haroon Qureshi, Age 22 years, Occu.Nil
- 7E. Sana d/o Haroon Qureshi, Age 21 years, Occu.Nil
- 7F. Safiya d/o Haroon Qureshi, Age 20 years, Occu.Nil

Address of Respondent No. 7A to 7F R/o Hayat Mohammed Ki Chawl, Parsiwadi, "Maharashtra Mutton Shop", in front of Masjid, Ghatkopar West, Mumbai 86

- 8. Shamabee w/o Haroon Qureshi, Age 50 years, Occu.Household
- 9. Irshad s/o Haroon Qureshi, Age 30 years, Occu.Labour
- 10. Ibrahim s/o Haroon Qureshi, Age 28 years, Occu.Labour,

Address of Respondent No.8 to 10 Hayat Mohammed Ki Chawl, Parsiwadi, Haji Mohammed Ki Chawl, Noora Land, Bohriki Chawl, Building No.406, Bandra West, Mumbai 86

- 11. Wahab Dadamiya Qureshi, Age 52 years, Occu.Business, R/o Room No.02, Sholapurki Chall, Ranisati Marg road, Pathan Wadi, Malad East, Mumbai 97
- 12. Shanazbee w/o Wahab Qureshi, Age 50 years, Occu.Household, R/o Room No.02, Sholapurki Chall, Ranisati Marg road,

Pathan Wadi, Malad East,
Mumbai 97

13. Isral s/o Wahab Quareshi,
Age 27 years, Occu.Labour,
R/o Room No.02, Sholapurki
Chall, Ranisati Marg road,
Pathan Wadi, Malad East,
Mumbai 97

..Respondents

Mr Mujtaba Gulam Mustafa, Advocate for petitioner
Mr Shaikh Faruk V.Patel, Advocate for respondent no.3

CORAM : N.W. SAMBRE, J.

DATE : 20th January 2015

PER COURT

1. Heard learned Counsel for the petitioner – original defendant no.7. The respondents to the present petition filed a suit for specific performance against the present petitioner – defendant no.7 based on the agreement of sale dated 17th July 2008 executed in favour of the plaintiff for Gut No.15, admeasuring 35 acres, 15 gunthas situated at village Babra, Taluka Vaijapur, District Aurangabad and for injunction restraining the petitioner - defendant no.7 from causing obstruction and interference in the peaceful possession and enjoyment of plaintiffs over the suit property and from creating third party interest. The suit was initially numbered as Special Civil Suit No.582 of 2008 and subsequently, renumbered as Special Civil Suit No.159 of 2010.

2. The present petitioner – defendant no.7 filed written statement on 29th December 2008, Exh.14 alleging therein that the defendants No.1 to 9 have already sold the suit property to defendant nos.10 and 11 on 26th May 2008 for a valid consideration.

3. As a consequence of above referred pleadings of the present petitioner – defendant no.7 in the written statement, the plaintiffs had amended the suit and added alleged purchasers by virtue of the sale-deed/agreement dated 26th May 2008 as party defendants no.10 and 11 viz.Dattatraya Prabhakar Dhumal and Parasram Prabhakar Dhumal.

4. It appears that the said Dattatraya and Prabhakar have chosen to file separate suits against the defendants no.1 to 9 vide Special Civil Suit No.1/2013 for specific performance of contract based on the agreement dated 26th May 2008.

5. The present petitioner – defendant no.7, having realised that his admission will come in his way, had moved an application for withdrawal of the admissions given in the written statement vide Exh.116. The said application Exh.116 was objected by the plaintiffs and the defendants no.10 and 11 who have given their respective say on 3rd September 2013 and 27th November 2013.

6. The learned Civil Judge, Senior Division, Vaijapur, by his order dated 16th January 2014 was pleased to reject the said application, as such present petition.

7. Learned Counsel for the petitioner – defendant no.7 has sought to canvass that the amendment put forth by the present petitioner is covered under the provisions of Order VI, Rule 17 of the Code of Civil Procedure. According to him, he has every right to delete the admissions. He further submits that the admissions are required to be deleted as those are contrary to the pleadings as are taken in both the

suits, i.e. Special Civil Suit No.159/2010 and Special Civil Suit No.1/2013. He further urged that the deletion is to the interest of the plaintiffs and no prejudice will be caused, if the deletion of admissions is granted.

8. Having considered the submissions made by the learned Counsel for the petitioner and having perused the order impugned passed by the learned Civil Judge, Sr.Division, Vaijapur, it is required to be noted that it is open for a party to take alternative pleas in the pleadings, however, such alternative pleadings cannot be permitted to be inserted by way of amendment, if such amendment is spoiling the case of other defendants, which is already set out.

9. Though, it is settled position of law that the amendments to the pleadings which are necessary for the determination of real controversy involved in the suit should be allowed, however, amendment which takes away admission given or sought deletion of the same, cannot be granted.

10. The above referred view is already settled in catena of decisions which are considered by the learned trial Court while passing the order impugned. In my opinion, the learned trial Court has considered all the pros and cons of the averments and the contentions raised by the present petitioner.

11. One more aspect of which this Court takes note is that the common written statement was filed by the petitioner - defendant no.7 and other defendants i.e. defendants 1 to 9 through general

power of attorney and otherwise. It is only defendant no.7 who has raised challenge to the order impugned, even though application for withdrawal of admission was moved by the defendants 1A to 1E and defendants no.2 to 6.

12. The above referred fact also disentitles the present petitioner to claim the relief.

13. In view of above, no case for interference is made out. Writ Petition stands dismissed.

14. However, it is made clear that it is always open to a party to explain his admission given in the pleadings at the stage of recording of evidence.

(N.W. SAMBRE, J.)

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