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

WRIT PETITION NO. 9499 OF 2014

Madhukar Rupa Ladhe,
Age: 45 years, Occu: Service,
R/o. Passthalnaka, Bhoisar,
Tal-Palghar, Dist. Thane

..PETITIONER
(Orig. Def. No. 1)

VERSUS

- 1) Manohar Rupa Ladhe,
Age: 45 years, Occu: Agriculture,
R/o. Khirdi Khurd, Tal-Raver,
Dist. Jalgaon
- 2) Shekh Vahed Shekh Kasam Pinzari,
Age: 60 years, Occu: Business & Agriculture,
R/o. Khirdi Khurd, Tal-Raver,
Dist. Jalgaon
- 3) Vatsalabai Rupa Ladhe,
Age: 70 years, Occu: Nil,
R/o Through Bhaskar Shankar Bhangale,
R/o. Nibhora, Tal – Raver,
Dist. Jalgaon
- 4) Shravan Chiman Ladhe,
Age: 70 years, Occu: Agriculture,
R/o. Khirdi Bhudruk, Tal-Raver,
Dist. Jalgaon

..RESPONDENTS
(R.No. 1 Orig. Plaintiff, R. No.
2 to 4 Orig. Def. No. 2 to 4)

Mr Sanket S. Kulkarni, Advocate for petitioner;
Mr R. D. Kawade, Advocate holding for Mr P. R. Katneshwarkar, Advocate
for respondent no.1

CORAM : N.W. SAMBRE, J.

Date : 5th December, 2015

ORDER :

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By the present petition, the petitioner – original defendant no.1, has challenged the order dated 5th September, 2014, passed by Civil Judge Junior Division, Raver, below Exh.31, in Regular Civil Suit No.148 of 2012, whereby the prayer of respondent no.1 - plaintiff for amendment of plaint came to be allowed.

2. Respondent no.1 – plaintiff has instituted the aforementioned suit for injunction simplicitor, seeking not to create third party interest in the suit property and not to dispossess him from the suit property.

3. By application Exh.31, respondent no.1 – plaintiff has sought to insert, by way of amendment, the plea of pre-emption, which came to be granted.

4. Mr Kulkarni, learned Counsel appearing on behalf of petitioner – defendant no.1, by relying upon the judgment of the Apex Court, in the matter of **Bishan Singh & ors. vs. Khazan Singh & anr.**, reported in **AIR 1958 SC 838**, would urge that a plea of pre-emption could be raised only in case if following eventualities are satisfied with :-

- (1) The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right.
- (2) The preemptor has a secondary right or a remedial right to follow the thing sold.

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- (3) It is a right of substitution but not of re-purchase, i.e., the preemptor takes the entire bargain and steps into the shoes of the original vendee.
- (4) It is a right to acquire the whole of the property sold and not a share of the property sold.
- (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place.
- (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place.

According to him, right of pre-emption gives a preferential right to a person over the others and arises in respect of such land only in the case of sales and in respect of such property only in the case of sales or of foreclosures of the right to redeem such property. According to him, in absence of satisfaction of above referred conditions, the application for amendment of plaint ought not to have been granted.

5. According to the learned Counsel, the order impugned is a cryptic order, which does not deal with the said aspect and is liable to be set aside being not sustainable.

6. Mr Kawade, learned Counsel appearing on behalf of respondent no.1 – plaintiff would urge that the judgment in hand, relied upon in the matter of Bishan (supra) has no application to the present case, as the said

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judgment was rendered upon final adjudication of rights of the parties and the order impugned in the present petition is an interlocutory order of granting amendment of plaint. According to him, it is premature to say that respondent no.1 has not satisfied the requirements to establish right of pre-emption. According to him, the petition deserves dismissal.

7. Having bestowed my anxious thought to the submissions made, Mr Kawade, in my opinion, was right in submitting, whether the plaintiff has made out a case for pre-emption, is required to be analyzed by the Trial Court after analyzing the pleadings and evidence that is brought on record. It is premature for this Court to infer at this stage that respondent no.1 – plaintiff has not qualified the requirements for raising a plea of right of pre-emption. In my opinion, a party has every right to raise a plea, however, whether such plea of pre-emption which is raised, is required to be granted or not, is based on supporting material in the form of pleadings and evidence brought on record by such party, which is always subject to the scrutiny by the Court below.

8. In that view of the matter, in my opinion, there is no substance in the petition. Writ Petition thus fails and stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

amj