

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5788 OF 2015

Vijaykumar Sharanappa Tanwade ... Petitioner
Vs.
Nagnath Kashinath Patil and others ... Respondents

Mr. S. S. Kanetkar for Petitioner.
Mr. Ashutosh M. Kulkarni for Respondents.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 04, 2015

P.C. :

Heard Mr. Kanetkar, learned Counsel for petitioner and Mr. Kulkarni, learned Counsel for respondents at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and order dated 13.03.2014 passed by the learned Joint Civil Judge, Senior Division, Solapur below exhibit-30 in Special Civil Suit No.123 of 2014. By that order, the learned trial Judge rejected the application made by the plaintiff for amending the plaint.

3. Mr. Kanetkar submitted that respondents, hereinafter referred to as defendants, agreed to sell 81 Ares on the western side out of old Gat No.73/2A/1A/1 and new Gat No.73/B/8/1 out of 9 Hectares 38 Ares. Defendants executed document styled as 'Issar Pavati' on 26.10.2004 enclosing therewith rough sketch. In paragraph 1 of the plaint, the boundaries of the area of 81 Ares proposed to be sold by defendants are also given. He submitted that pending the Suit, defendants have executed sale deed on 18.03.2008 in favour of Maharashtra Academy of Engineering and Educational Research, Pune (for short 'Academy'). By

that sale deed, defendants have sold 6 Hectares 40 Ares from the suit land. On 18.10.2012, defendants have executed sale deed in respect of 6 Ares again in favour of Academy. In view thereof, plaintiff filed application dated 23.01.2015 – exhibit 30 for adding paragraph 5A in the plaint giving all the details of these transactions. It is further set out therein that before executing the sale deed, defendants have carried out measurements and fixed the boundaries of the property. It is, therefore, evident that unless the measurement is carried out as also area is ascertained, defendants will not be in a position to execute the sale deed in favour of the plaintiff. He submitted that the proposed amendment is for elaborating the contentions raised in the plaint and also it does not alter the nature of the Suit.

4. Mr. Kanetkar relied upon the decision of the Apex Court in the case of ***Abdul Rehman Vs. Mohd. Ruldu***, (2012) 11 SCC 341 to contend that the object of Order VI, Rule 17 C.P.C. is that Courts should try merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on that basis would not change the nature of the suit. Relying upon paragraphs 11 and 13 of that judgment, Mr. Kanetkar submitted that no prejudice will be caused to the defendants if the proposed amendment is allowed. The proposed amendment is necessary for determining the controversy raised between the parties.

5. On the other hand, Mr. Kulkarni supported the impugned order. He submitted that the learned trial Judge rightly observed that at this stage it is not at all necessary to fix the boundary and also demarcate the

suit property and that this is not at all relevant for deciding the present Suit. The Suit can be successfully disposed of on its own merits even in the absence of the proposed amendment.

6. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, plaintiff has instituted Suit for specific performance of contract dated 26.10.2004 on the basis that defendants have agreed to sell 81 Ares out of 9 Hectares 38 Ares. Even accepting the case made out by the plaintiff in the proposed amendment, at the highest, it can be said that defendants have executed sale deeds in respect of 6 Hectares 46 Ares out of 9 Hectares 38 Ares. If plaintiff ultimately succeeds in the Suit, he is entitled to get sale deed in respect of 81 Ares as per the rough sketch annexed to Issar Pavati and defendants would be bound to execute the sale deed in respect of the property described in Issar Pavati and in paragraph 1 of the plaint. Understood thus, the learned trial Judge did not commit any error in holding that the proposed amendment is not necessary for deciding the controversy raised in the Suit. While dealing with the application for amendment, the Court has to consider whether the proposed amendment is necessary in deciding the controversy raised between the parties.

7. Even in the case of **Abdul Rehman** (*supra*), in paragraph 11, the Apex court has observed that courts should allow all amendments that are necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. As noted earlier, the proposed amendment is not necessary for deciding the controversy between the parties. Hence, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, Petition fails and the same is dismissed.

8. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) C.P.C.

(R. G. KETKAR, J.)

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