

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 5304 OF 2015**

Mr. Rajiv Kantilal Shah

..Petitioner

Vs

Smt. Rekha vijay Oswal and Anr

.. Respondents

Mr.S.M.Oak, Senior Advocate a/w Mr Sagar Joshi i/b V.R. Patil,
Advocatesfor Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 23/12/2015

PC:

1. Heard Mr.OaK, learned senior counsel for the petitioner.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'original defendant', has challenged the judgment and order dated 16.10.2014 passed by the learned 2nd Jt Civil Judge, Jr. Dn., Karad, below Exh.96 in R.C.S.No.342 of 2011. By that order, the learned trial Judge allowed the application made by the respondent, hereinafter referred to as 'plaintiff', under Order VI, Rule 17 of C.P.C. for amending plaint.
3. Mr.Oak submitted that the plaintiffs instituted suit for perpetual injunction restraining the defendant from creating third party interest or entering into oral or written agreement with third party or from creating encumbrance on the suit property;

for injunction restraining the defendant from obstructing the plaintiffs' possession over the suit property.

4. Mr. Oak submitted that the plaintiffs alleged that the defendant executed agreement of sale dated 30.9.2008 in their favour. The agreed consideration was Rs. 15 lacs. The plaintiffs had paid Rs. 14,95,000/- in cash and balance amount of Rs. 5000/- was to be paid subsequently. In pursuance thereof, the defendant has put plaintiffs' in possession of the suit property. He submitted that in paragraphs 4 and 5, the plaintiffs specifically asserted that on 21.9.2011 the defendant refused to execute sale deed in favour of the plaintiffs and further asserted that he will sell the suit property to third party for higher consideration.

5. Mr. Oak submitted that pending the suit, the plaintiffs filed application dated 29.4.2014 for amending plaint and are claiming relief of specific performance of contract. He submitted that perusal of the plaint and particular paragraphs 4 and 5 clearly shows that the defendant refused to perform contract on or before 21.9.2011 and the present application is taken out on 29.4.2014. He further submitted that the agreement of sale dated 30.9.2008 provided that the plaintiffs were to get sale deed executed from the defendant within two months from the date of execution of the agreement. In other words, he submitted that on or before 30.11.2008, the plaintiffs were to get the sale

deed executed from the defendant. He relied upon Article 54 of the Limitation Act and submitted that two months period was fixed for performance and therefore, period of limitation of three years will begin from 30.11.2008. Though the suit is not instituted within three years from 30.11.2008 and is instituted on 23.9.2011 which is barred limitation.

6. In view thereof, issue notice to the respondents, returnable on 14.1.2016. Petitioner is at liberty to make application before the trial Court for adjourning the matter beyond 14.1.2016. If such application is made, learned trial Judge is expected to adjourn the matter beyond 14.1.2016.

7. Parties are put to notice that subject to the time constraint and convenience of the Court, Court will consider deciding Petition finally at the stage of admission. Notice shall further indicate that despite service if the respondents fail to appear, the court will consider disposing of the petition on its own merits on the next date of hearing.

(R.G.KETKAR, J.)