

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5129 OF 2010

Smt. Vaijayanti C. Khanna & Ors.	..	Petitioners
VS.		
M/s. J. B. Engineers	..	Respondent

Mr. Pratap Patil for Petitioners.
Mr. Sachin Khandagade i/b. Ram & Co. for Respondent.

CORAM : M. S. SONAK, J.
DATE: 30 MARCH 2015

P.C. :-

1] This petition challenges the order dated 23 March 2010, by which the 2nd Jt. Civil Judge, Senior Division, Pune, has allowed the respondent - plaintiff to amend the plaint.

2] Admittedly, the application for amendment was made and has been allowed prior to the commencement of the trial in the suit. The learned counsel for the petitioners however contends that by allowing the amendment, the entire nature of the suit has been changed. Further, the learned counsel for the petitioners points out that certain observations in the impugned order virtually indicate that the learned Civil Judge has accepted that the agreement in question was an agreement to sale, contrary to the contention of the petitioners that the same was, at the highest, a development

agreement. For these reasons, the learned counsel for the petitioners submitted that the impugned order is liable to be set aside.

3] Having heard the learned counsels for the parties and perused both the impugned order as well as the record, in my judgment, there is no necessity to interfere with the impugned order. The suit as originally filed, was for a declaration that the agreement in question was binding upon the petitioners - defendants. In view of the petitioners stance in the written statement, the respondent - plaintiff have applied for amendment to the plaint seeking *inter alia* relief of specific performance and further styling the agreement in question as an agreement for sale. Such amendment, by itself, does not change the entire nature of the suit. In fact, such amendment will assist in the determination of real controversy between the parties. Therefore, there is no jurisdictional error in the making of the impugned order. However, it is clarified that at the stage of allowing application for amendment, there was no question of the learned Civil Judge deciding whether the agreement in question was indeed an agreement for sale as contended by the respondents - plaintiffs in the amendment application or whether the same was a development agreement as contended by the petitioners - defendants. Accordingly, this issue is left open for

decision after the trial in the suit. None of the observations in the impugned order may therefore be construed as having concluded this issue one way or the other.

4] With the aforesaid observations, present petition is disposed of. Impugned order is not interfered with. There shall however be no order as to costs.

5] Rule is disposed of accordingly.

(M. S. SONAK, J.)

Chandka