

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6430 OF 2014

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|----|---|-------------------------|
| 1] | Mr. Dinesh Shivaji Gawali |] |
| | Age about 34 years, Occ : Agriculturist |] |
| | |] |
| 2] | Mr.Kailas Shivaji Gawali |] |
| | Age about 36 years, Occ : Agriculturist |] |
| | |] |
| | Both R/at – Pathardigaon, |].... Petitioner. |
| | Tal. & Dist. Nashik |] (Org.Deft.No.3 and 4) |

versus

- | | | |
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| 1] | Mr. Shivaji Balu Porje |] |
| | Age about 39 years, Occu : Agriculturist |] |
| | R/o : Village Shevagedang, Tal. Igatpuri |] |
| | Dist. Nashik |] |
| | |] |
| 2] | Mr. Narhari Keru Chindhe |] |
| | Age about 49 years, Occu : Agriculturist |] |
| | R/o. Rajur Bahula, Post. Vilholi |] |
| | Tal. & Dist. Nashik |] |
| | |] |
| 3] | Smt. Rakhmabai Bapu Waghchoure |] |
| | Age about 57 years, Occu : Agriculturist |]..... Respondents. |
| | R/o : Pandavnagar, Pathardi, |] (Orig. Plaintiff / |
| | Wadala Road, Dist. Nashik |] Deft. No.1 & 2) |

Mr. Sudam Kale for the Petitioners.
Mr. R N Gite for the Respondent No.1.

CORAM : R. M. SAVANT, J.
DATE : 26th October 2015

ORAL JUDGMENT :

1 At the outset the learned counsel appearing for the Petitioners shri
Sudam Kale seeks deletion of the Respondent Nos.2 and 3 who in the context

of the challenge raised in the above Petition are only formal parties. The said Respondents are accordingly allowed to be deleted at the risk of the Petitioners. Amendment to be carried out during the course of the week.

2 Rule with the consent of the learned counsel for the parties made returnable forthwith and heard.

3 The writ jurisdiction of this Court is invoked against the order dated 21/06/2014 passed by the learned Joint Civil Judge, Junior Division, Igatpuri, Dist. Nashik, by which order the application (Exhibit 89) filed by the Petitioners – original Defendant Nos.3 and 4 for amendment of their written statement came to be rejected.

4 The Respondent No.1 herein is the original Plaintiff who has filed the suit in question for specific performance of the agreement dated 14/10/2008 executed by the Defendant Nos.1 and 2. The Plaintiff has also challenged the sale deed dated 18/07/2008 executed by the Defendant Nos.1 and 2 i.e. his vendors in favour of the Defendant Nos.3 and 4. The said sale deed is in respect of 80 Ares of land. It seems on 14/10/2008 the Defendant Nos.1 and 2 executed a further sale deed of 35 Ares in favour of the Defendant Nos.3 and 4. After the said fact came to the knowledge of the Plaintiff, the Plaintiff filed an application (Exhibit 33) for amendment of the plaint, so as to

incorporate a challenge to the said sale deed dated 14/10/2008. An objection was raised on behalf of the Defendant Nos.1 and 2 that though the Plaintiff was aware of the factum of the sale deed being executed in favour of the Defendant Nos.3 and 4 by the Defendant Nos.1 and 2, the Plaintiff has not sought the amendment of the plaint. The Trial Court did not countenance the said objection raised on behalf of the Defendant Nos.1 and 2. The Trial Court by its order dated 25/08/2010 allowed the said application (Exhibit 33) filed by the Plaintiff for amendment of the plaint so as to incorporate a challenge to the sale deed dated 14/10/2008. In the context of the present Petition, it is pertinent to note that the Trial Court in paragraph 5 of its order dated 25/08/2010 has observed that the Defendants in view of the fact that the amendment is being allowed would be required to file their additional written statement and for that purpose they would have to incur additional costs and therefore imposed costs of Rs.800/- upon the Plaintiff to be paid to the Defendants.

5 The Defendant Nos.3 and 4 thereafter have filed the instant application (Exhibit 89) for amendment of their written statement. It was their case that in view of the fact that a challenge has also been raised to their sale deed dated 14/10/2008 executed in their favour by the Defendant Nos.1 and 2, that they are seeking amendment to their written statement. It was also the case of the Defendant Nos.3 and 4 that the amendment to the written

statement would be necessary for a complete and effectual adjudication of the suit.

6 The Trial Court considered the said application (Exhibit 89) and by the impugned order dated 21/06/2014 has rejected the same. The rejection of the said application is on the basis of two fold grounds, that the property proposed to be inserted by way of an amendment is a totally different property, that the same would change the nature of the suit and would also cause prejudice to the other side. It is the said order dated 21/06/2014 passed by the Trial Court rejecting the application (Exhibit 89) filed by the Defendant Nos.3 and 4 for amendment of their written statement which is taken exception to by way of the above Writ Petition.

7 The learned counsel for the parties sought to make submission for and against the amendment to the written statement being allowed, whereas it was the contention of the learned counsel for the Petitioners that it is pursuant to the liberty granted by the order dated 25/08/2010 that the Defendant Nos.3 and 4 have filed the instant application (Exhibit 89).

8 Per contra, it was the contention of the learned counsel for the Respondent No.1 original Plaintiff that though the order was passed as long as back in the year 2010, the instant application (Exhibit 89) has been filed in the

year 2014 that too when the Trial Court has permitted the Defendant Nos.3 and 4 to file an additional written statement.

9 Having heard the learned counsel for the parties, I have considered the rival contentions. As indicated above, it is by the order dated 25/08/2010 passed on the application (Exhibit 33) that the Plaintiff was allowed to amend the plaint so as to raise a challenge to the sale deed dated 14/10/2008 which was in respect of 35 Ares of land sold by the Defendant Nos.1 and 2 to the Defendant Nos.3 and 4. In the order allowing the said amendment dated 25/08/2010 it was observed that the Defendants would be required to file their additional written statement and in view thereof costs of Rs.800/- were imposed on the Plaintiff whilst permitting him to amend the plaint. No doubt there has been some delay and the Defendant Nos.3 and 4 filed the instant application (Exhibit 89) after the order came to be passed on 25/08/2010. However, one fact which cannot be lost sight of is that the Defendant Nos.3 and 4 were in fact permitted to file their additional written statement. However, what they are now seeking is to amend their written statement and to deal with the case arising out of the challenge raised to the sale deed dated 14/10/2008. The Trial Court has lost sight of the fact that by the amendment sought a challenge has been raised to the sale deed in respect of 35 Ares of land which sale deed is dated 14/10/2008 and undoubtedly the property involved in the amendment is a different property but is part of the

suit property. The Plaintiff has raised a challenge to the sale deed dated 14/10/2008 in respect of the said suit property.

10 In my view, the Trial Court has approached the matter on a wrong premise and has rejected the application (Exhibit 89) losing sight of the fact that the earlier incumbent had granted permission to the Defendant Nos.3 and 4 to file their additional written statement. The impugned order dated 21/06/2014 is required to be quashed and set aside, and is accordingly quashed and set aside. Resultantly, the application (Exhibit 89) would stand allowed. The Defendant Nos.3 and 4 would be entitled to amend their written statement in terms of the amendment sought vide the said application (Exhibit 89). The same to be done within a period of 4 weeks from date. In the facts and circumstances of the present case, the Defendant Nos.3 and 4 in view of the time taken by them to file the application for amendment of the written statement to pay costs of Rs.2000/- to the Respondent No.1 original Plaintiff the same to be done within four weeks from date. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]