

Mr. Shardul Singh i/b. Mr. Vaibhav R. Gaikwad for Petitioner.
Mr. Atul Daga a/w. Mr. Chinmay Gaonkar i/b. Mahimtura and Company for Respondents.

P.C. :

Heard Mr. Singh, learned Counsel for petitioner and Mr. Daga, learned Counsel for respondents at length.

2. Rule. Mr. Daga waives service for respondents. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and order dated 29.08.2014 passed by the learned Judge, City Civil Court, Bombay in Chamber Summons No.256 of 2011 in S.C.Suit No.990 of 2010. By that order, the learned trial Judge partly allowed the Chamber Summons taken out by the plaintiff under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the plaint by introducing paragraph 3A.

4. While partly allowing the Chamber Summons, the learned trial Judge permitted introduction of first sentence of paragraph 3A, which is

to the following effect:

“3A. The plaintiff states that the suit portion consists of two rooms which are in continuous use, occupation and possession of the plaintiff, his mother, sister Maharookh and brother Rohington.”

5. The learned trial Judge, however, rejected rest of the assertions on the ground that remaining part of the amendment does not relate to material facts. Parties cannot plead evidence in the plaint or written statement or they cannot be permitted to do so even by way of amendment.

6. In support of this Petition, Mr. Singh submitted that petitioner states that suit portion consists of two rooms, which in continuous use, occupation and possession of the plaintiff, his mother, sister Maharookh and brother Rohington. Rest of the averments in the proposed paragraph 3A are pertaining to articles lying in the suit portion in support of the first sentence. In other words, these articles are lying in suit portion consisting of 2 rooms, which are in possession of the plaintiff, his mother, sister Maharookh and brother Rohington. The learned trial Judge, however, proceeded to hold that the rest of the averments in paragraph 3A are in the nature of evidence and evidence cannot be pleaded.

7. On the other hand, Mr. Daga supported the impugned order. He submitted that the proposed amendment which is not allowed is really not necessary for deciding the controversy between the parties. Mother of the petitioner and respondent No.1 died on 16.12.2009. Sister Maharookh shifted to some other place after her marriage and brother Rohington shifted to Bengaluru. He submitted that the trial Court has rightly rejected the remaining amendment as the plaintiff had taken contradictory stand.

8. 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, the learned trial Judge has allowed only first sentence of paragraph 3A extracted hereinabove and the rest of the contents of paragraph 3A are disallowed on the ground that the plaintiff has pleaded evidence. I do not agree with this finding as the plaintiff claims to be in possession of the suit portion. To substantiate that plea, he has pleaded that certain articles are lying in the suit portion. Mr. Daga countered this submission and submitted that even articles of respondents are lying in the suit portion. In my opinion, this aspect is a matter of trial and the parties will have to lead evidence to substantiate their respective case.

9. Having regard to the fact that the plaintiff is claiming to be in continuous use, occupation and possession of the suit portion along with his mother, sister Maharookh and brother Rohington, I find that the proposed amendment is necessary to substantiate that case. Hence, impugned order cannot be sustained and deserves to be set aside thereby allowing Chamber Summons in entirety. Hence, the impugned order dated 29.08.2014 is set aside and Chamber Summons No.256 of 2011 is allowed. Amendment shall be carried out within 14 days from today. Respondents will be at liberty to file additional written statement qua proposed amendment within 4 weeks from the service of the amended plaint. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)