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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1538 OF 2015

Amita Kishore Mansukhani ... Petitioner

Vs.

Atur Park Co-Op Hsg. Society and others ... Respondents

Mr.A.V.Anturkar, Senior Advocate a/w Mr.Dormaan J.Dalal i/b
Mr.Sugandh B.Deshmukh, Advocates for Petitioner.

Mr.Nitin P.Deshpande, Advocate for Respondent No.1.

Mr.Rahul P.Walvekar i/b Mr.S.R.Ganbavale, Advocatefor Respondents
No. 2 &4.

Mr.Arif Doctor a/w Mr.Roshan Pinto i/b Mulla & Mulla & CBC,
Advocates for Respondent No.3.

CORAM : R. G. KETKAR, J.**DATE : 22th JUNE, 2015****P.C. :**

. Heard Mr.A.V.Anturkar, learned Senior Counsel for the
petitioner, Mr.Nitin P.Deshpande, learned Counsel for respondent
No.1, Mr.Rahul P.Walvekar, learned Counsel for respondents No. 2 &
4 and Mr.Arif Doctor learned Counsel for respondent No.3 at length.
Rule. Learned Counsel for respective respondents waive service. At
the request and by consent of the parties, rule is made returnable
forthwith and the petition is taken up for final hearing.

2. By this petition under Article 227 of the Constitution of
India, original defendant No.4 has challenged the judgment and
order dated 09/10/2014 passed by the learned 3rd Joint Civil Judge,
Senior Division, Pune, below Exhibit 106 in Special Civil Suit No.756

of 2001. By that order, the learned trial Judge allowed the application made by respondent No.1, hereinafter referred to as plaintiff under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.').

3. In support of this petition, Mr.Anturkar submitted that the plaintiff instituted suit on 31/08/2001 for specific performance of agreement of sale dated 01/07/1989 executed by respondent No.2, hereinafter referred to defendant No.1. The plaintiff filed application at Exhibit 90 for amending the plaint. By that amendment, paragraph 1d of the plaint describing property was incorporated. Mr.Anturkar submitted that by registered conveyance that property was purchased by the petitioner on 21/02/2000. The plaintiff filed application at Exhibit 106 on 20/07/2013 for amending the plaint. By the proposed amendment, the plaintiff wants to incorporate paragraphs 7(A) to 7(D) set out in the application. By paragraph 7(A), the plaintiff intends to implead petitioner as defendant No.4. By paragraph 7(C), the plaintiff has described the area purchased by the petitioner namely area admeasuring 3300 sq.meters out of C.T.S. No. 11/1/C as described in paragraph 1(d). By paragraph 7(D), the plaintiff prayed for mandatory injunction against defendants to demolish the building described as building No. 21 constructed on part of C.T.S. No. 11/1/C.

4. Mr.Anturkar submitted that the application moved by the plaintiff lacks bonafide as the plaintiff all along was aware of the construction being carried out on 3300 sq.meters purchased by the petitioner on 21/02/2000. The learned trial Judge further has not dealt with this aspect at all. He further submitted that the plaintiff has also not challenged the conveyance dated 21/02/2000. Despite that, the plaintiff has sought mandatory injunction for demolishing the building constructed in the area of 3300 sq.meters purchased by the petitioner. He, therefore, submitted that Petition requires consideration.

5. On the other hand, Mr.Deshpande submits that as the learned trial Judge has not considered all the contentions advanced before him, the impugned order may be set aside and the application at Exhibit 106 may be restored for deciding the same afresh after considering all the contentions advanced by the parties.

6. In view thereof and by consent of the parties, the impugned order is set aside and the application at Exhibit 106 is restored to the file of the learned trial Judge. The learned trial Judge will consider all the contentions advanced by the parties and deal with the same and dispose of the application in accordance with law. All the contentions of the parties in that regard are expressly kept

open. Rule is made absolute in the above terms. In the circumstances, there shall be no order as to costs.

(R. G. KETKAR, J.)