

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL No. 281 OF 2013

Shri Vijaykumar s/o Moreshwar Lambat and others.

-Vrs.-

M/s Krishna Housing Agency, through its Proprietor.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.

DATED : 10th SEPTEMBER, 2015

Heard advocate Shrivastava for appellants (original plaintiffs), advocate Muley for respondent nos. 1 & 2 (original defendant nos. 1 & 2), advocate B.G. Kulkarni for respondent no.3 (original defendant no.3) and Shri Rao learned AGP for respondent nos 6 to 10.

The order dated 15.04.2013 passed by the Joint Civil Judge, Senior Division, Nagpur below Exh.62 in Special Civil Suit No.1067/2009 rejecting the plaint filed by appellants under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure is challenged in this appeal.

Advocate Shrivastava submits that appellants before this court had purchased the suit property by a prior sale deed from respondent no.1. According to him, respondent no. 4 as a proprietor of respondent no.1 has executed a Power of Attorney in favour of respondent no.5 and using that Power of Attorney and power, respondent no.5 has executed sale deed in

favour of appellants. Therefore, later sale deed executed by respondent no. 1 in favour of respondent no. 3 is bad in law.

The learned counsel also submits that respondent no. 4 is in fact, supporting the case and cause of appellants.

Advocate Muley on behalf of respondent nos. 1 & 2 and Advocate Kulkarni on behalf of respondent no. 3 dispute these contentions.

However, parties agree that respondent no. 3 who has raised objection in his application under Order VII Rule 11 at Exh. 62 can be allowed to raise his objection to the suit by amending written statement and thereafter said objection, as incorporated in written statement, can be looked into by trial court in accordance with law.

Advocate Kulkarni submits that if objections are allowed to be added in written statement, respondent no. 3 shall not press application at Exh. 62.

Advocate Shrivastava submits that when Exh.62 was preferred, issues were already framed by trial court and therefore all issues should be tried together. Advocate Kulkarni submits that objections proposed by respondent no. 3 by amending written statement should be tried as a preliminary issue.

We are not inclined to look into the rival contentions in this regard. Question whether to try a particular issue as preliminary issue or not, rests solely in the discretion of the trial court and trial court has to address it in accordance with law.

In view of the agreement between parties we grant

respondent no. 3 leave to add necessary objections in written statement already filed on record within a period of two weeks from today. The appellants/original plaintiffs shall thereafter be at liberty to amend their plaint within further period of two weeks.

Trial court shall thereafter proceed further with the trial in accordance with law.

Needless to mention that all other rival contentions are kept open.

As the amendment is already allowed to be incorporated in written statement, Exh. 62 is rendered infructuous and thus, accordingly, disposed of.

In view of this, it is apparent that the challenge in this first appeal is rendered infructuous.

In view of this order, Special Civil Suit No. 1067/2009 is restored back to the file of Joint Civil Judge, Senior Division, Nagpur. Parties to appear before that court on 1.10.2015. The period of two weeks given to respondent no. 3 (defendant no.3) shall begin from the said date.

With orders accordingly, appeal is disposed of. No costs.

JUDGE

JUDGE

Hirekhan