

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No.468 of 2016

Ramkrishna s/o. Narayan Misal
And Another.

.. Petitioners.

Versus

Suryakant s/o. Palsaheb Choudhary
And Another.

.. Respondents.

Shri. Kishor D. Khade, Advocate, for petitioners.

Shri. A.A. Mukhedkar, Advocate, for respondent No.2.

With

Writ Petition No.6495 of 2015

Suryakant s/o. Palsaheb Choudhary. **.. Petitioner.**

Versus

Nilesh s/o. Raghuveerbhai Patel
And Others.

.. Respondents.

Shri. Sachin S. Deshmukh, Advocate, for petitioner.

Shri. A.A. Mukhedkar, Advocate, for respondent No.1.

Shri. Kishor D. Khade, Advocate, for respondents 2 & 3.

CORAM: T.V. NALAWADE, J.

DATE : 19th AUGUST 2016

ORDER:

1) Both the petitions are filed against the order made on Exhibit 60 of Special Civil Suit No.86/2011 by the Civil Judge, Senior Division, Gangakhed, District Parbhani. This application was filed by original plaintiff to amend the plaint. The application was partly allowed after hearing both the sides. As the amendment as prayed in para 3-A to 3-C was not allowed, plaintiff filed Writ Petition No.6495/2015 and as the application was allowed, the defendants have filed the other petition. Both sides are heard.

2) The suit is filed for relief of specific performance of contract of sale of immovable property. At paras 5 to 8, the particulars of the agreement are given and the particulars are given with regard to more payments made subsequent to the date of agreement by the plaintiff. The mention of execution of the document of agreement and receipts is also there in those paragraphs.

3) In the application filed for amendment under Order 6 Rule 17 of the Code of Civil Procedure, in para 3-A to 3-C plaintiff mentioned the particulars of sale deed executed in favour of defendant Nos.2 and 3 by defendant No.1 and he has also mentioned the particulars of the documents like agreement of sale and receipts executed in his favour by defendant No.1 like the names of witnesses. This portion he wanted to add in the pleadings. It can be said that the basic contentions were there in the aforesaid paragraphs and by making amendment he wanted to mention the names of witnesses i.e. the evidence which he wanted to give. In view of these circumstances it can be said that such amendment was unwarranted though the trial Court has observed that these facts were within knowledge of the plaintiff but he did not mention in the pleadings.

4) The other portion of the amendment application involves the nature of transaction made by defendant No.1 in favour of defendant Nos.2 and 3 and the plaintiff wanted to mention that they are collusive transactions and they were executed on the basis of lay out plan which was

not yet sanctioned. It can be said that these particulars were also not required in view of nature of relief, specific performance of contract of sale. However, amendment is allowed to mention these facts.

5) The learned counsel for the petitioner placed reliance on a case reported as **(2012) 11 SCC 341 (Abdul Rehman v. Mohd. Ruldu)**. The facts of the reported case were different and the amendment sought was also different. Even when additional relief was claimed by way of amendment, the Apex Court held that relief claimed was implicit in the initial pleadings and such relief can be granted to minimise the litigation. There cannot be dispute over the proposition. In the present matter, the plaintiff was not changing the relief and the plaintiff wanted to give only more particulars and it is already observed that such amendment was also not warranted in view of nature of relief claimed and the contentions made in the plaint with regard to the right to get specific performance. On the other hand, learned counsel for the original defendants placed reliance on cases reported as **2012 (4) Mh.L.J. 40 (SC) (J. Samuel v. Gattu Mahesh)** and

2014(2) ALL MR 550 (Walchandnagar Industries Limited v. Indraprashta Developers). In the first case the Apex Court has laid down that for allowing amendment Court needs to first get satisfied that there is reasonable cause for allowing amendment the amendment ordinarily should not be allowed once trial has commenced. The Apex Court has, however, discussed the conditions also for consideration of such prayer. The Apex Court has laid down that due diligence needs to be shown by party seeking amendment. It is observed that such amendments should not create surprises and should not cause delay in the proceeding. Similar observations are made by this Court in the second case. There is no dispute over the proposition. In the present matter it is already observed that due to misconception the application was made. Relief is not changed and the nature of the case is also not changed. There are no merits in both the petitions. In the result, both the petitions are dismissed.

Sd/-
(T.V. NALAWADE, J.)

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