IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7710 OF 2014

Shaikh Maqbul Ahmed
Age: 50 years, Occu.: Agri.,
R/o Para, Tq. Washi, Dist. Osmanabad. ..PETITIONER

VERSUS

1. Tukaram Shamrao Choudhari
   Age: 72 years, Occu.: Agri.,
   R/o Para, Tq. Washi, Dist. Osmanabad.

2. Smt. Triveni Dilip Shelke
   Age: 44 years, Occu.: Household,
   R/o As above. ..RESPONDENTS

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Mr. P.K. Deshmukh, Advocate for petitioner.
Mr. A.B. Hiwale, Advocate for respondents.

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CORAM : T.V. NALAWADE, J.
DATED : 04th OCTOBER, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent, heard both sides for final disposal.

2. The present petition is filed to challenge order dated 18th July, 2014 made in application at Exhibit 61 in Regular Civil Suit No. 322 of

2012 which is pending before the Joint Civil Judge, Junior Division, Washi. The suit is filed by present petitioner for specific performance of contract of sale of agricultural land. In the suit, relief of injunction was also claimed by contending that in contract of sale possession was handed over to the plaintiff. The first application field for temporary injunction was not pressed and other application filed for temporary injunction to protect possession came to be rejected. Issues are framed.

3. In the application for amendment the plaintiff contended that when he lost in temporary injunction application, the defendant forceably took possession. It is also contended that during the pendency of the suit, Defendant No.1 sold some portion to Defendant No.2. After making this contention, the plaintiff contended that he now wants to add the relief of possession in plaint and he wants the relief of mesne profit also.

4. The Trial Court has given reasoning that so called agreement of sale was not registered and no stamp duty was paid when possession was shown to be given under the agreement dated 07th January, 1997. It cannot disputed that besides the written agreement there can be evidence to get the relief of specific performance of contract of sale. When the plaintiff has come with specific case that during the pendency of the suit

he lost possession, the Trial Court ought to have allowed the amendment. The amendment will not change the nature of the suit as ultimate relief is a specific performance of contract of sale of immovable property. Thus interference is warranted in the order made by the Trial Court.

5. In the result, petition is allowed. Order made at Exhibit 61 refusing the amendment claimed as 2(A) and 2(B) is hereby set aside. The application in respect of those reliefs is also allowed. Rule is made absolute in those terms.

(T.V. NALAWADE, J.)

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