

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8000 OF 2014

SAMPATLAL MOTILAL DHADIWAL
VERSUS
MANSUKHALAL MOTILALA DHADIWAL AND OTHERS

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Advocate for Petitioner : Mr. Kulkarni Mukul S.
Advocate for Respondents 1 and 16: Mr. S.P. Chapalgaonkar
Advocate for Respondents 2 to 25, 17 to 34 : Mr. A.M. Phule

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CORAM : V. K. JADHAV, J.
DATED : 17th FEBRUARY, 2016

PER COURT:-

1. By consent of parties, heard finally at admission stage.
2. The petitioner-original plaintiff instituted a suit bearing Special Civil Suit No. 41 of 2009 for decree of partition, separate possession, injunction and mesne profits. During pendency of suit, by way of amendment in the plaint, 2 tenanted properties are included in the suit property, which are described in para No. 2(L) and 2(O) of the plaint. Consequently, the trial court passed order below Exh.1 directing the petitioner-plaintiff to produce valuation certificate of all suit properties and pay the appropriate court fees on the same. Barring the said two tenanted properties, mentioned above, the petitioner has submitted valuation certificate and also paid requisite court fees stamp on the same. The petitioner-plaintiff however, filed

an application Exh. 100 requesting that he has relinquished his right in the two properties as mentioned above and he may be permitted to delete the same. The trial court has rejected the said application by order dated 1.1.2014. The petitioner-plaintiff submitted specific and detail application at Exh.126 pointing out that the said properties are tenanted properties and the petitioner-plaintiff may be directed to delete the said properties. However, the trial court has rejected said application by holding that trial of the suit is already commenced and earlier similar application Exh.100 was rejected. Hence, this writ petition.

3. Learned counsel for the petitioner submits that so far as the application Exh.100 is concerned, the same was rejected by the trial court mainly on the ground that the details of properties, sought to be deleted, are not given in the application. Therefore, the petitioner-plaintiff had filed an application Exh.126 mentioning all details of the properties sought to be deleted. Learned counsel further points out that the property No. 2 (L) and (O) as mentioned in para 2 of the plaint is concerned, it is specifically mentioned that those two properties are tenanted properties. Furthermore, it has specifically mentioned in application Exh.126 that the property 2 (L) is in possession of defendant No.26 on rent basis and he runs one shop in the said tenanted premises independently. Besides this, it is also

mentioned that the property mentioned at Sr. No. 2 (O) is in possession of defendant No.31 on rent basis and where he runs rolling material shop independently. Learned counsel submits that in view of the details of these two properties mentioned in the plaint itself, the trial court ought to have allowed application at Exh.126.

4. Learned counsel for the respondents submits that the learned Judge of the trial court has rightly rejected the said application. The petitioner-plaintiff has challenged the order passed below Exh.100 belatedly and application at Exh.126 filed for the same purpose is rightly rejected by the trial court.

5. It appears from the pleadings of the petitioner-plaintiff that said properties are tenanted properties and even in that way it cannot be a subject matter of suit. Furthermore, the petitioner-plaintiff is deleting the said properties at his risk and he would suffer the consequences if such deletion would affect his case adversely. There is specific pleadings to the effect that the property No. 2(L) is in possession of defendant No.26 on rent basis and he runs one shop independently in the said tenanted premises and property No. 2(O) is in possession of defendant No.31 on rent basis and he runs rolling material shop independently in the said tenanted premises. In view of that there is no hurdle as such to allow the application

Exh.126. Hence, the following order:-

O R D E R

- I. Writ petition is hereby allowed.
- II. The order dated 30.7.2014 passed below Exh.126 in Special Civil suit No. 41 of 2009 by the learned C.J.S.D. Kopargaon is hereby quashed and set aside.
- III. Application Exh.126 is hereby allowed in terms of its prayer clauses.
- IV. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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