

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 231 OF 2015

Amrit Kundanmal Gugale,
Age about 67 years, Occu. Advocate,
R/o. 2452/53, Telikhunt,
Ahmednagar.

**....Petitioner.
(Ori. Deft. No. 32)**

Versus

- 1) Lalabee Mard Shaikh Adam
(Deceased) Through
- 1A) Shaikh Aslam Babasaheb,
Age about 48 years, Occu. Business,
- 1B) Shaikh Aasif Babasaheb,
Age about 46 years, Occu. Business,
- 1C) Shaikh Ashpak Iqbal,
Age about 44 years, Occu. Business,

All R/o. 628, Near Satpir,
Tophkhana, Ahmednagar.

**....Respondents.
(Ori. Plaintiffs)**

Mr. V.D. Sapkal, Advocate for petitioner.

Mr. A.D. Kasliwal, Advocate for respondent No. 1A to 1C.

CORAM : T.V. NALAWADE, J.
DATED : 31st March, 2016.

JUDGMENT :

- 1) Revision is **admitted**. Notice after admission made returnable forthwith. By consent, heard both the sides for final disposal.

2) The revision is filed against the order made on Exh. 188 by the learned 3rd Jt. Civil Judge, Senior Division, Ahmednagar in Special Civil Suit No. 62/2003. The application was filed by present petitioner for rejection of plaint under the provision of Order 7, Rule 11 of Civil Procedure Code (hereinafter referred to as 'C.P.C.' for short) and the said application is rejected by the Trial Court.

3) Special Civil Suit No. 62/2003 is filed by the successors of Smt. Lalabee Shaikh Aadam, who are Shaikh Aslam, Shaikh Aasif and Shaikh Ashpak. It is mainly against defendant - Nashik Diocesan Council Public Trust, registered public trust. Other defendants including the present petitioner are the purchasers of some portion of the suit property from this trust and so, they are made parties. Relief of declaration is claimed that sale deed executed in favour of defendant Nos. 1 to 21 on 20.5.1993 is sham sale deed and it is not binding on plaintiffs. Relief of declaration is claimed that plaintiffs are owners of Survey No. 166 old, which is given final Plot No. 130 situated within limits of Local Body of Ahmednagar and admeasuring 8 Acres 13 Gunta. Present petitioner came to be added as defendant No. 32 in the suit subsequent to the filing of

the suit and on the basis of application given by plaintiffs for amendment of plaint and for permission to add present petitioner as defendant. This Court in Writ Petition No. 9267/2013 allowed the plaintiffs to add present petitioner as a party defendant by allowing the amendment, but to the application and to the writ proceeding, present petitioner was not party.

4) Present petitioner filed application under the provision of Order 7, Rule 11 of C.P.C. and contended that in Regular Civil Suit No. 220/2004, which was filed by present petitioner against the plaintiffs of Special Civil Suit No. 62/2003, compromise had taken place and in view of the compromise, consent decree is made in favour of petitioner. It is contended in the application at Exh. 188 filed in the Trial Court that plaintiffs of present suit had abandoned their claim in respect of the property sold to petitioner under sale deed dated 26.4.1995 and so, the suit is not tenable as against the present petitioner and plaint needs to be rejected to that extent.

5) The Trial Court has rejected the application by holding that present petitioner was joined as party defendant in the suit as per the order of High Court and so, this order is

binding on the present petitioner and the Trial Court.

6) In the present proceeding, copy of plaint of Regular Civil Suit No. 220/2004, which was filed in the Court of Civil Judge, Senior Division is produced and it shows that the suit was filed in respect of some portion of revenue Survey No. 166 [final Plot No. 130] and relief of declaration was claimed that the plaintiff, present petitioner is owner of the said portion purchased under the sale deed registered on 26.4.1995 and the relief of injunction was also claimed in respect of the said portion. Copy of compromise decree is also produced on the record and it shows that in view of the compromise pursis filed at Exh. 102, the suit was decreed. It was the case of plaintiff that his vendor had purchased the said portion under sale deed dated 20.5.1993 from Nashik Diocesan Council Public Trust, defendant No. 1 of the present suit. Declaration is given by the Civil Court in Regular Civil Suit No. 220/2004 on the basis of compromise that the plaintiff, present petitioner has become owner in view of the sale deed of 1995. The said suit was filed against Shaikh Aslam, Shaikh Asif and Shaikh Ashpak, the plaintiffs of the present suit. Compromise decree was given on 15.6.2009. It appears that in Special Civil Suit No. 62/2003 also pursis was filed at Exh. 139 and prayer was made to delete the

portion of 14.29 R. sold to Amrit, present petitioner and so, no relief is claimed in respect of that portion. On 15.6.2009 itself this application was allowed and plaintiffs were allowed to carry out amendment accordingly. It appears that subsequently, under Exh. 156 prayer was made to add present petitioner as a party defendant in Special Civil Suit No. 62/2003 and then this Court allowed the plaintiff to make amendment. (Writ Petition No. 9267/2013).

7) It is not disputed that the consent decree made in Regular Civil Suit No. 220/2004 in favour of present petitioner was never challenged. Even in Special Civil Suit No. 62/2003 amendment is not made to claim relief in respect of said consent decree. On the contrary, by filing pursis, the portion shown to be sold to present petitioner was deleted by plaintiffs from the present suit. The relief clause of Special Civil Suit No. 62/2003 shows that the relief claimed is as against defendant Nos. 1 to 21. Even if, it is presumed that this Court had given permission to present plaintiffs to make amendment, that amendment is only in the body of the plaint and no relief as such is claimed which could have been claimed consequential to the amendment allowed by this Court. Thus, no relief at all is claimed against present petitioner in the present suit. These

circumstances are relevant. This Court holds that the Trial Court has committed error in rejecting the application filed by present petitioner under the provision of Order 7, Rule 11 of C.P.C. This Court holds that, that part of the plaint needs to be rejected.

8) In the result, Civil Revision Application is allowed. The order made by the learned Civil Judge, Senior Division Ahmednagar on Exh. 188 in Special Civil Suit No. 62/2003 filed by the petitioner is hereby set aside. The said application is allowed and part of the plaint in respect of present petitioner stands rejected.

[T.V. NALAWADE, J.]

ssc/