

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

WRIT PETITION NO. 399 OF 2016

Jalindar Laxman Lohakare

..PETITIONER

VERSUS

Kesharbai Rambhau Lohakare and Others

..RESPONDENTS

....

Mr. Z.M. Pathan, Advocate for petitioner.

Mr. R.P. Phatke, Advocate for respondents.

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CORAM : T.V. NALAWADE, J.

DATED : 21st DECEMBER, 2016

ORDER :

1. The petition is filed to challenge the order made on Exhibit 72 in Regular Civil Suit No. 183 of 2012 presently pending in the Court of Civil Judge, Senior Division, Newada. Both sides are heard.

2. The suit is filed by respondent for relief of declaration that sale deed executed by Rambhau – husband of Plaintiff No.1 is sham and bogus. The relief of injunction is also claimed. The defendant/ present petitioner has filed written statement and he has contended that he is in possession of the property. Plaintiff has contended that they were in possession of the property. Application filed for temporary injunction by

present petitioner / defendant is allowed by the Trial Court. Then the application at Exhibit 72 was moved by original plaintiffs for making amendment in the plaint. The amendment application is allowed and due to the amendment, the contention of the plaintiff that during pendency of the suit, they lost possession is brought on record. Thus the suit will be now for relief of possession also in addition to the aforesaid declaratory relief.

3. It is the case of present petitioner / defendant that exactly opposite contentions are made in the plaint and so such amendment could not have been allowed. When some contention is made by plaintiff, it taken as contention from the pleading then it is upto the plaintiff to prove that contention. The main relief claimed is that the sale deed was sham and bogus. It appears that there is recital in the sale deed showing that possession of portion sold was given to the petitioner / purchaser. It can be said that ultimate relief in the suit which was filed for declaration can be of possession though the plaintiff had come with case during pendency of the suit that plaintiff lost possession during pendency of the suit. This contention or change of stand will not make any difference in the decision of the suit. If plaintiff fails to prove that it was sham and bogus transaction, then he may not get any relief. The contention that

the possession was already handed over by Rambhau to defendant can be considered and recital in the sale deed can be used in favour of the defendant. Thus, the change in stand will not make much difference for the decision of the suit.

4. This Court sees no reason to interfere in the order made by the Trial Court. Such amendment can be allowed if the plaintiff contends that during pendency of the suit he lost possession. In the result, petition stands dismissed.

(T.V. NALAWADE, J.)

SSD