

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3109 OF 2016

Sayyad Ahmjad Hussain Jahagirdar ... Petitioner
Vs.
Parvatibai Narayan Mohite and others ... Respondents

Mr. Sharat T. Bhosale for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : MARCH 16, 2016

P.C. :

Heard Mr. Bhosale, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 15.02.2016 passed by the learned Civil Judge, Junior Division, Karmala below exhibit-121 in Regular Civil Suit No.135 of 2008. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as plaintiff, under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the plaint.

3. The learned trial Judge observed in paragraph 11 that the four boundaries mentioned in the sale deed No.2091 / 1999 dated 23.08.1999 and the description of four boundaries shown in the plaint are identical. In paragraph 13, the learned trial Judge noted that plaintiff was the party to the first sale deed No.1274 of 1996 executed by him in favour of Parvatibai. Four boundaries mentioned in that sale deed and in the plaint are also identical. The learned trial Judge also considered that the real dispute between the parties is about the real nature of transaction. According to the plaintiff, real transaction is 'mortgage'. As against this,

it is the contention of the defendant that it is 'out and out sale'. The learned trial Judge, therefore, held that the proposed amendment is not necessary in determining the real controversy between the parties. Apart from that, the application is moved after 8 years after filing of the Suit. In other words, plaintiff has not satisfied the conditions stipulated in proviso to Order VI, Rule 17 of the Code of Civil Procedure, 1908.

4. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application. Basically, the proposed amendment is not necessary for determining the real controversy between the parties. For the reasons recorded in paragraphs 11 and 13 of the trial Court's order, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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