

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1267 OF 2016

Shri Appaso Shivgonda Patil .. Petitioner

vs.

Sadashiv Lahu Havaladar & Ors. .. Respondents

Mr.Datta H. Pawar for the petitioner

CORAM : K. K. TATED, J.
DATE : JULY 11, 2016

PC.:

1 Heard the learned counsel for the petitioner.

2 By this petition under Article 227 of the Constitution of India the Petitioner plaintiff is challenging the order dated 14.12.2015 passed by 9th Joint Civil Judge, Junior Division, Kolhapur below Exhibit 109 in Regular Civil Suit No.524 of 2007 rejecting plaintiff's application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for carrying out amendment in plaint.

3 In the present proceeding, plaintiff filed Regular Civil Suit No.525 of 2007 before the Civil Judge, Junior Division, Kolhapur on 11.6.2007 for declaration that the two sale deeds dated 19.4.2007 and 21.4.2006 in favour of respondents defendants are not binding on the

plaintiff. Plaintiff also prayed in the said suit for injunction restraining respondents defendants from disturbing his peaceful possession of the suit property i.e. Gut No.151 Area 92 R and Gut No.153 Area 21 R.

4 In that suit, the plaintiff preferred application dated 8.10.2007 under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 for an order of injunction restraining respondent defendants not to carry out any construction activities in the suit premises.

5 The Trial Court framed issues on 21.11.2009.

6 Thereafter plaintiff filed application below Exhibit-109 dated 29.9.2015 for carrying out amendment in the plaint claiming possession of the suit premises by directing defendant to remove the construction carried out by them. That application was rejected by Trial Court by impugned order dated 14.12.2015. Hence, the present Writ Petition.

7 The learned counsel for the petitioner submits that Trial Court erred in coming to the conclusion that because of amendment, entire nature of the Suit is going to change. He submits that plaintiff initially filed Suit on the ground that they are in possession of the Suit Premises. He submits that during the pendency of the Suit, respondent defendant started construction activities and carried out construction of three rooms and also mobile tower. He submits that hence, the plaintiff made application for carrying out amendment in the plaint by directing defendant to demolish the construction carried out by them and hand

over vacant and peaceful possession of the suit premises. He submits that the Trial Court erred in coming to the conclusion that because of the said amendment, the entire nature of the suit is going to change. In support of this contention, the learned counsel for the petitioner relies on the judgment of the Apex Court dated 27.9.2012 in the matter of ***Abdul Rehman & Anr. vs. Mohd. Ruldu & Ors. in Civil Appeal No.7043 of 2012***. It is to be noted that in that authority, the Apex Court allowed plaintiff to carry out amendment for setting aside the sale deeds executed by defendants during the pendency of the suit. That is not the case in the matter in hand. Hence, this authority is not applicable in the present case. He submits that this Hon'ble Court be pleased to set aside the impugned order and allow the plaintiff to carry out amendment in plaint. He submits that if Writ Petition is not allowed, irreparable loss and injury will be caused to them.

8 I have heard the learned counsel for the petitioner at length. I have gone through the copy of plaint, application filed by plaintiff for carrying out amendment and the order passed by Trial Court. It is to be noted that though petitioner has not placed on record copy of reply filed by defendant to application below Exhibit-109, Trial Court considered reply filed by the defendants in the impugned order. Defendant nos.4 and 5 specifically stated in reply that the construction was carried out by them before filing the Suit and that was within the knowledge of the plaintiff. They further stated that inspite of having knowledge about the construction, plaintiff specifically made statement in the plaint that they are in possession of the suit property. These facts are considered by the Trial Court in paragraph 4, 6 and 7 of the

impugned order. This shows that though plaintiff had knowledge about the construction carried out by defendant, they failed and neglected to make any averments in the plaint at the time of filing on 11.6.2007. He filed application for amendment on 28.9.2015 after more than 8 years. Considering these facts, I do not find any substance in the Writ Petition.

9 Writ Petition stands rejected.

JUDGE