

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6730 OF 2015

Raghunath Dadu Jadhav (decd) through
his heirs Chandrakant R. Jadhav and others ... Petitioners
Vs.
Laxman Dadu Jadhav (decd) through his heirs
Dilip Laxman Jadhav and others ... Respondents

Mr. Vikas Kolekar for Petitioners.
Ms Ratna Jaiswal for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JULY 14, 2016

P.C. :

Heard Mr. Kolekar, learned Counsel for petitioners and
Ms Jaiswal, learned Counsel for respondents at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'defendants', have challenged the judgment and order dated 08.01.2015 passed by the learned Judge, presiding over Court Room No.14 of the Small Causes Court at Mumbai below exhibit-89 in L.E.Suit No.216/265 of 2008. By that order, the learned trial Judge rejected the application made by the defendants for initiating the proceedings under the Contempt of Courts Act, 1971 against the plaintiffs for amending the plaint.

3. In support of this Petition, Mr. Kolekar submitted that initially, plaintiffs had instituted Suit in the City Civil Court, Bombay. By order dated 29.08.2008, the learned trial Judge ordered return of plaint to the plaintiffs as per the Rules and directed both the parties to appear before the Small Causes Court on 23.09.2008. He invited my attention to the plaint, which was originally filed in the City Civil Court, and in particular paragraph 19 and prayer clause (a). Paragraph 19 originally

was thus,

“19. The Plaintiff submits that he is the tenant of the suit room and the Defendants are trespassers therein without having any right therein of any nature whatsoever. The Plaintiff is therefore entitled to free and peaceful use and occupation of the suit room without any hindrance and disturbance by the Defendants and the Defendants are liable to be evicted from the suit room as having no right therein in any manner whatsoever.”

4. He submitted that following corrections were made:

“19. The Plaintiff submits that ~~he is~~ **original plaintiff and plaintiffs** are the tenant of the suit room and the Defendants are ~~trespassers~~ **gratuitous licensees** therein without having any right therein of any nature whatsoever. The Plaintiff is therefore entitled to free and peaceful use and occupation of the suit room without any hindrance and disturbance by the Defendants and the Defendants are liable to be evicted from the suit room as having no right therein in any manner whatsoever.”

5. He further submitted that originally, prayer clause (a) was thus,

“a. it be declared that the Defendants are trespassers in the suit room i.e. Room No.10, Ground Floor, Siddhat Mansion, Dr. Babasaheb Ambedkear Road, Near Chitra Cinema, Dadar (E), Mumbai-400 014, and be ordered and decreed to vacate the portion of the suit room illegally occupied by them;”

6. He submitted that following corrections were made in prayer (a):

“a. it be declared that the Defendants are ~~trespassers~~ **gratuitous licensees** in the suit room i.e. Room No.10, Ground Floor, Siddhat Mansion, Dr. Babasaheb Ambedkear Road, Near Chitra Cinema, Dadar (E), Mumbai-400 014, and be ordered and decreed to vacate the portion of the suit room illegally occupied by them;”

7. Mr. Kolekar submitted that the corrections so made amounts to tampering with the Court's record and it is nothing but contempt of Court. He, therefore, submitted that the learned trial Judge should have initiated proceedings under the Contempt of Courts Act. He submitted that Petition requires consideration.

8. On the other hand, Ms Jaiswal submitted that originally the Suit was instituted in the City Civil Court, Bombay. Upon return of the plaint by the City Civil Court to the Small Causes Court, the office raised objections. Objections No.15 and 16 are to the following effect:

“Objection No. 15 - Relationship between parties.

Objection No. 16 - Correction in paragraph 19 and prayer.”

9. Ms Jaiswal submitted that the plaint was returned by the City Civil Court on the ground that the relationship between the parties is to be decided by the Small Causes Court. Plaintiff, therefore, made corrections in pursuance of the objections 15 and 16 raised by the office. She invited my attention to paragraph 7 of the impugned order and submitted that the corrections were made for removing the office objections. As the plaint was admittedly returned by the City Civil Court to the presentation before the Small Causes Court and in view of the office objection, there was no necessity of seeking any permission of the Court for carrying out correction in the plaint.

10. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. While rejecting the application, the learned trial Judge has observed in paragraph 7 thus,

“7. Perused the record. Perusal of plaint and order at Exhibit-5, reveals that originally the plaint was filed in City Civil Court at Mumbai and as per order dated 29.8.2008 of City Civil Court, the plaint was returned to the plaintiff for presentation in Small Causes Court. Perusal of Roznama reveals that the plaintiff presented the plaint in this court on 5.9.2008 and office of this Court had taken objection and time for removing objection was granted till 13.10.2008. From perusal of plaint, it reveals that the plaintiff has made corrections in the plaint as alleged on 24.9.2008. From the Roznama it reveals that till 13.10.2008 the matter was for removing office objection. Therefore, there appear substance in the contention of plaintiff that plaint was corrected for removing office objection. The alleged correction made in the plaint appears to be necessary for filing the suit in

this Court. In view of office objection, there was no necessity of seeking any permission of the Court for carrying out any correction in the plaint. Therefore, there appears no substance in objection of the defendants. Moreover, from record it reveals that the matter is fixed for evidence of defendants since long. It appears that the objection was not taken by the defendant in their written statement or at any earlier stage. Considering the above facts, there appears substance in contention of the plaintiff that the application is filed with a view to delay the matter.”

11. I have also carefully perused the office objections raised by the office of the Small Causes Court, and in particular objections No.15 and 16 and find substance in the submissions advanced on behalf of the plaintiffs. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

12. Mr. Kolekar submits that on or before 01.08.2016, defendants will file additional written statement and serve copy during this period on the other side. In view thereof, defendants are permitted to file additional written statement on or before 01.08.2016 and shall serve copy on the other side during this period. Order accordingly.

(R. G. KETKAR, J.)

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