

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 6086 OF 2016

Meena Gurunath Mhatre
and Ors

...Petitioners

Versus

Mulraj Devidas Kapadia
(since deceased) and Ors.

...Respondents

....

Mr.R.S. Apte, Senior Advocate i/b. Ms. Savina R. Crasto, for the
Petitioners.

Mr. Asif Shaikh i/b. Khan Javed Akhtar, Advocate for
Respondents No.3 & 4.

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CORAM : R. G. KETKAR, J.

DATE : 1st July, 2016

P.C.

1. Heard Mr. R.S. Apte, learned Senior Counsel for the
petitioners and Mr. Asif Shaikh, learned Counsel for
respondents No.3 and 4, at length.

2. By this Petition under Article 227 of the Constitution of
India, the petitioners, hereinafter referred to as the 'plaintiffs',
have challenged the judgment and order dated 11.1.2016 passed
by the learned Judge, presiding over Court Room No.26 of the
Court of Small Causes at Mumbai below Exhibit-53 in R.A.E. &
R. Suit No.1106/1710 of 2013. By that order, the learned trial

Judge allowed the application made by respondents No.3 and 4, hereinafter referred to as 'defendants No.3 and 4', under Order 6 Rule 17 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') for amending the written statement.

3. In support of this Petition, Mr. Apte strenuously contended that the defendants No.3 and 4 filed their written statement on 21.7.2014. He submitted that defendants No.3 and 4 filed application Exhibit-53 under Order 6 Rule 17 of C.P.C. on or about 19.10.2015 for amending the written statement. By the proposed amendment, defendants No.3 and 4 wanted to bring on record the developments of August and October, 2013. It is the case of defendants No.3 and 4 that on 22.8.2013, they approached one of the co-owners Vilas Gajanan Mhatre for transferring the tenancy rights in their favour. By letter dated 24.10.2013, Mr. Vilas Mhatre gave consent and rent receipt was issued for the month of August, 2013. Mr. Apte submitted that this development was much prior to defendants No.3 and 4 filing their written statement on 21.7.2014. In the written statement so filed, there is no reference to this correspondence. In other words, Mr. Apte submitted that application for

amendment is belatedly filed and also the proposed amendment is malafide. He submitted that in fact notices were issued repeatedly to defendant No.1 for not creating third party interest. It is the case of the plaintiffs that defendant No.1 has unlawfully sub-let the suit premises to defendants No.3 and 4. He, therefore, submitted that the impugned order deserves to be set aside.

4. On the other hand, Mr. Shaikh supported the impugned order.

5. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that defendants No.3 and 4 filed written statement on 21.7.2014. It is also a matter of record that defendants No.3 and 4 filed application for amending written statement on or about 19.10.2015. In paragraph-4 they have made reference to the correspondence dated 22.8.2013 and 24.10.2013. Apart from that, in paragraph-7 defendants No.3 and 4 have contended that the tenancy agreement was registered with Sub-Registrar of Assurances on 14.9.2015. Said development is obviously after

filing of the written statement on 21.7.2014. That apart, it is not in dispute that the plaintiffs have not filed affidavit of evidence. In other words, the trial is yet to commence. By granting the amendment application does not mean that the Court has accepted the case made out by defendants No.3 and 4. In any case the parties will have to establish their respective case. Understood thus, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

6. It is made clear that where a decree is challenged by the petitioners, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by section 105(1) of C.P.C. Apart from that liberty is reserved with the petitioners to apply for disposal of the suit in a time bound manner. If such an application is made, learned trial Judge will pass appropriate order. Order accordingly.

(R. G. KETKAR, J.)