

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 5789 OF 2015

Shri. Gopal Purshottam Deshmukh	...Petitioner
<i>Versus</i>	
Shri. Chandrakant Kantilal Shah	
And Ors.	...Respondents

....

Mr. Abhaykumar Apte, Advocate for the Petitioner.
Mr. Girish R. Agrawal, Advocate for Respondents No.1 to 3.

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CORAM : R. G. KETKAR, J.

DATE : 21st July, 2016

P.C.

1. Heard Mr. Abhaykumar Apte, learned Counsel for the petitioner and Mr. Girish Agrawal, learned Counsel for respondents No.1 to 3, at length.

2. Rule. Mr. Agrawal waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as the plaintiff, has challenged the judgment and order dated 10.1.2014 passed by the learned Additional Judge, Small Causes Court, Pune below

Exhibit-147 in Civil Suit No.516/2012. By that order, the learned trial Judge rejected the application made by the plaintiff under Order VI Rule 17 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') for amending the plaint.

4. In support of this petition, Mr.Apte submitted that the plaintiff has instituted the suit for perpetual injunction restraining the defendants from demolishing the suit premises as also causing any damage to the suit premises. During pendency of the suit, the plaintiff took out application at Exhibit-5 for temporary injunction. By order dated 22.4.2013, the learned trial Judge rejected that application. On the same day, the plaintiff gave application at Exhibit-139 and the learned trial Judge directed the parties to maintain status quo till 15.6.2013. However on 23.4.2013 the defendants have demolished the structure where the suit premises was situate. The plaintiff, therefore, took out application at Exhibit-142 on 26.4.2013 for initiating proceedings of contempt of Court's order and the said proceedings were pending. The plaintiff has, therefore, taken out present application under Order VI Rule 17 of C.P.C. for bringing these facts on record by incorporating

paragraphs-8A, 8B, 9A, 11A, 12C(1), 12C(2). As these developments took place pending the suit, the learned trial Judge should have allowed the application. The learned trial Judge, however, rejected the application on the ground that the proposed amendment changes the nature of the suit and the plaintiff is coming out with a entirely different case. The learned trial Judge also noted that at this stage the defendants have not made any kind of construction at the place of the suit premises and that would be a future cause of action to the plaintiff, if in case he establishes his tenancy right in respect of the suit premises. The learned trial Judge also held that the proposed amendment and the relief sought depends on the imaginary theory that if in future the defendants construct the building at the place of the suit premises.

5. On the other hand, Mr. Agrawal supported the impugned order. He submitted that while rejecting application Exhibit-5, the learned trial Judge has noted that the plaintiff failed to submit rent receipt after 1.4.1989 onwards and also failed to establish *prima facie* possession over the suit premises after 1989. He further reiterated that the defendants do not

intend to carry out the construction where the suit premise is situate. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the plaintiff has instituted the suit in the year 2012 for perpetual injunction restraining the defendants from demolishing the suit premises as also causing damage to the suit premises. It is not in dispute and is rather matter of record that application Exhibit-5 taken out by the plaintiff for temporary injunction was rejected on 22.4.2013. It is the case of the plaintiff that after rejection of the application, though the parties were directed to maintain status quo in respect of the suit premises till 15.6.2013 the defendants have demolished the suit premises on 23.4.2013. In other words, the plaintiff did not get even opportunity of filing appeal to challenge the order passed below Exhibit-5. By the proposed amendment, the plaintiff wants to bring these facts on record as also he seeks such further reliefs in view of the subsequent developments.

7. The fact of demolition of the suit premises is not disputed. It is in that context, one has to consider the application made by the plaintiff for amending the plaint. Instead of considering from this angle, the learned trial Judge observed in paragraph-9 that the plaintiff is trying to bring the suit within limitation of six months under Section 6 of the Specific Relief Act, 1963. To say the least, the approach of the learned trial Judge is totally perverse. The Suit is not under Section 6 of the Specific Relief Act, 1963 as observed by the learned trial Judge. By the proposed amendment, the plaintiff intends to bring on record the subsequent developments post rejection of the application Exhibit-5. The learned trial Judge was also not justified in recording finding that the proposed amendment changes the nature of the suit. It is not as if that the suit premises are intact and still the plaintiff has filed application for amendment. As the suit premises is not in existence, he is perfectly justified in applying for amendment. In view thereof, the impugned cannot be sustained and is liable to be set aside and is accordingly set aside. Application Exhibit-147 is allowed. The plaintiff shall carry out amendment within four weeks from today. The defendants shall file their amended

written statement within four weeks from receipt of the amended plaint. Rule is made absolute in aforesaid terms with no order as to costs. The learned trial Judge will decide the suit on the basis of the evidence on record and in accordance with law uninfluenced by the observations made in the impugned order and this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)