

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7210 OF 2016

Shri Anil Vishwasrao Ghugre	...Petitioner
vs.	
Malini Vishwas Ghugre & Ors.	...Respondents

Mr.Amit Borker for the petitioner.
Mr. Bhushan R. Mandlik for respondent No.1.

CORAM : K. K. TATED, J.
DATE : JULY 27, 2016.

P.C.

. Heard learned counsel for the parties.

2. By this petition under Article 227 of the Constitution of India the petitioner/plaintiff is challenging the order dated 19/10/2015 passed by the 5th Joint Civil Judge, Junior Division, Kolhapur below Exh.54 in Regular Civil Suit No.279/2014 allowing respondent/defendants application under Order VI, Rule-17 of Code of Civil Procedure, 1908 for amendment of written statement and thereby insertion of counter claim for possession of the suit property.

3. The petitioner/plaintiff filed Regular Civil Suit No.279/2014 against his mother for injunction restraining her from creating third party rights in respect of the suit property i.e. area of 464.5 sq. meters from CTS No.2079/28/ Plot No.7. Plaintiff preferred application below Exh.5 for injunction restraining defendants from creating third party right in suit property till the

hearing and final disposal of suit. In that suit respondent No.1 filed reply to Exh.5 cum written statement dated 29/3/2014. Trial Court by order dated 3/5/2014 rejected application below Exh.5. Hence plaintiff preferred Misc. Civil Appeal in the Court of District Judge-1, Kolhapur. In Misc. Civil Appeal No.197/2014 preferred by the plaintiff, the learned District Judge by order dated 17th April 2015 granted injunction restraining the defendant Nos.1 to 4 from causing any sort of obstruction over the suit property. The operative part of the said order reads thus:

“1. Appeal is hereby allowed.

2. Impugned order below Exh.5 in Reg. Civil Suit No.279/2014 dated 3/5/2014 by 15th Jt. Civil Judge, J. D. Kolhapur is hereby set aside and substituted as follows:

(a) Application Exh.5 is allowed.

(b) Defendant Nos.1 to 4 are hereby restrained from causing any sort of obstruction in common possession and enjoyment of the plaintiff over suit property.

(c) Defendants are restrained from creating third party interest in the suit property as well as they are temporarily restrained from transferring the suit property to others by any means, till final disposal of main suit.

Inform trial court accordingly.

Pronounced in open Court.”

4. Thereafter the defendant No.1 filed an Application below Exh.54 in R.C. S. No.279 of 2014 on 24/6/2015 for carrying out amendment in the written statement and claiming relief for possession of the suit property before the Trial Court. The Trial Court by impugned order dated 19/10/2015 allowed respondent

No.1's application for carrying out amendment on the ground that defendant No.1 wants to insert subsequent development in the written statement. Hence the present writ petition.

5. Learned counsel appearing on behalf of the petitioner/plaintiff submits that the trial Court erred in coming to the conclusion that the defendant can carry out amendment in written statement by inserting counter claim for possession. He submits that there is no question of allowing the defendant to amend the written statement by inserting the counter claim. In support of his contention he relied on the judgment of Hon'ble High Court in the case of *Maruti s/o Laxman Zhipare (Gawali) vs. Rahul s/o Arjun Sarang and another* *Mh. L. J. 821*, paragraph 9 wherein reads thus:

“It can thus be clearly seen that though a counter-claim can be filed after filing of written statement for a cause of action which has arisen before or after filing of the suit but before the defendant delivers his defence or before the time limited for delivering his defence has expired. Admittedly, the cause of action for which the counter claim has been filed has arisen in the year 2005 i.e much after written statement was filed by the defendant. In that view of the matter, I am of the considered view that the learned trial Court has erred in allowing the application of the respondent/defendant.”

6. Learned counsel for the petitioner/plaintiff submits that the impugned order passed by the Trial Court dated 19/10/2015 is required to be set aside.

7. On the other hand, learned counsel appearing on behalf of the defendant respondent had vehemently opposed the writ petition. He submits that during the pendency of the suit and after filing of the written statement, the plaintiff forcibly dispossessed the defendant from the suit property. Hence defendant No.1/mother of the plaintiff filed an application for carrying out amendment in the written statement inserting counter claim to restore her possession. He submits that the Hon'ble High Court in the matter of *Sheshrao s/o Bhaurao Sable vs. Ganesh s/o Mahadeorao Sable & Ors. 2006(6) Mh. L. J. 728* held that the defendant can amend his written statement by inserting counter-claim during course of pendency of the suit. He relied on paragraph 9 of the said judgment which reads thus:

“In these circumstances, it is apparent that when grievance of present petitioner-defendant is in relation to very same property and he is pointing out subsequent dispossession by respondent after obtaining a temporary injunction, the issue can be conveniently and properly decided in the same suit. This will avoid multiplicity of litigation. The argument about delaying of disposal of suit filed by respondent is fallacious because of the fact that if subsequent suit can be filed, the counter claim also can be entertained. The delay and labour required in the

subsequent suit can be avoided if the counter claim is allowed to be raised in the same suit.”

8. Learned counsel for the respondent/defendant submits that there is no substance in the present writ petition hence the same is required to be rejected.

9. I heard both the sides at length. In the present proceeding the dispute is between the mother and the son. The son has filed a suit against the mother for order of injunction restraining her from creating third party rights in respect of the suit property during pendency of the suit. Defendant alleged that the plaintiff forcibly dispossessed her from the suit property after filing of the written statement, hence the defendant made an application for carrying out amendment in the written statement inserting counter claim. It is to be noted that the Hon'ble High Court in the matter of ***Sheshrao s/o Bhaurao Sable vs. Ganesh s/o Mahadeorao Sable & Ors*** (supra) has categorically held in paragraph 9 that the defendant can carry out appropriate amendment if dispossessed during pendency of the suit after filing of the written statement. The advocate for the plaintiff relied upon the case of ***Maruti s/o Laxman Zhipare (Gawali) vs. Rahul s/o Arjun Sarang and another*** (supra) wherein the court has held that the defendant can not carry out amendment in written statement inserting the fact which were in existence on the date of filing of written statement. Hence same is not

applicable in the present case.

10. Considering these facts, I do not find any merit in the writ petition. Hence writ petition stands rejected.

JUDGE