

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12929 OF 2016

Gul Rupchand Kriplani ... Petitioner
Vs.
Mayur Mangaldas Kothari and others ... Respondents

Mr. Aditya A. Thakkar i/b. Mr. S. J. Khera for Petitioner.
Ms Deepti Panda a/w. Ms Khyati Pandit i/b. Dhru & Co. for Respondent No.1.
Mr. A. N. Narula i/b. J. N. Narula & Associates for Respondent No.2.
Mr. Suresh Chandra Shekhar a/w. Ms Li Shu Fen for Respondent No.5.
Ms Adeline Rodrigues, Respondent No.5 in person.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 07, 2016

P.C. :

Heard Mr. Aditya Thakkar, learned Counsel for petitioner, Ms Deepti Panda, learned Counsel for respondent No.1, Mr. A. N. Narula, learned Counsel for respondent No.2, Mr. Suresh Chandra Shekhar, learned Counsel for respondent No.5 and Ms Adeline Rodrigues for respondent No.5 in person at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.8' has challenged the judgment and order dated 09.08.2016 passed by the learned Judge, City Civil Court, Dindoshi, Mumbai in Chamber Summons No.831 of 2016 in Suit No.7034 of 1998. By that order, the learned trial Judge rejected the Chamber Summons taken out by defendant No.8 for amending the written statement.

3. In support of this Petition, Mr. Thakkar submitted that the learned trial Judge proceeded on the footing that the Suit is instituted post 2002 amendment. He submitted that the Suit is instituted in the year 1998 and therefore, unamended provisions of Order VI, Rule 17 of the Code of

Civil Procedure, 1908 (for short 'C.P.C.') will be applicable. The learned trial Judge however observed that the defendant No.8 has taken out Chamber Summon after the commencement of the trial and no case of due diligence is made out. He submitted that the approach of the learned trial Judge is totally erroneous.

4. Mr. Thakkar submitted that defendant No.8 is really pressing amendment as proposed in paragraphs 7T, 7U, 7V and 7(AA) of the Schedule of the amendment.

5. Perusal of paragraphs 7T, 7U and 7V shows that defendant No.8 has attacked the Agreement of Sale dated 09.09.1995 on the ground of deficit stamp duty and non-registration. In paragraphs 3 and 7 of the impugned order, the learned trial Judge has noted that dispute is between the plaintiff on one hand and defendants No.2, 3 and 4 on the other. In paragraph 7, the learned trial Judge has noted that the role of defendant No.8 is very limited. In view thereof, even if the Chamber Summons is governed by the unamended provisions of Order VI, Rule 17 of C.P.C., I do not find that the proposed amendment in paragraph 7T, 7U and 7V is necessary for deciding the controversy between the parties.

6. As far as the proposed amendment in paragraph 7(AA) is concerned, by that amendment, defendant No.8 wants to contend that defendant No.2 had taken out Notice of Motion No.1018 of 2016 in Suit No.1257 of 2007 inter alia praying for leave of the Court to execute the Agreement for Sale and / or Deed of Conveyance. He submitted that the learned trial Judge has issued injunction restraining defendants No.2 to 8 from creating third party interest in respect of Meherabad Property. The very fact that he took out Notice of Motion in this Court seeking leave to execute Agreement for Sale and / or Deed of Conveyance itself indicates

the intention of defendant No.2 to create third party interest thereby committing breach of the injunction order.

7. In my opinion, amendment proposed in paragraph 7(AA) is also not necessary. However, it will be open to the defendant No.8 to agitate the contentions that are available to him in law. Subject to this, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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