

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

**WRIT PETITION NO. 9375 OF 2015**

Atur Sangtani and Associates  
through its partner M.r Rajiv  
Sangtani

Petitioner

Vs

Atur Park Co-operative Housing  
Society, through its Secretary Mr  
M.H.Daruwalla and Ors

.. Respondents

**WITH**

**WRIT PETITION NO. 12111 OF 2015**

Sir Shapoorji Burjorji Broacha  
Charity Trust

Petitioner

Vs

Atur Park Cooperative Housing  
Society through its Secretary Mr  
M.H.Daruwalla and Ors

.. Respondents

Mr. Pesi Modi i/b S.R.Ganbavale, Advocate for Petitioner in  
W.P.No.9375 of 2015 and Respondent no.2 in Writ Petition No.  
12111/2015.

Mr.Arif Doctor a/w Ms. Neha Dhuru i/b Mulla & Mulla & Craigie  
Blunt & Caroe, Advocates for Petitioner in W.P. No.12111 of 2015  
and Respondent no.2 in W.P.No.9375 of 2015.

Mr. Nitin P. Deshpande, Advocate for Respondent no.1 and Mr.  
D.J.Dalal, Advocate for respondent no.4 in both petitions.

CORAM : R.G.KETKAR,J.  
DATE : 29/03/2016

**PC:**

1. Heard Mr. Pesi Modi, learned counsel for the petitioner in  
Writ Petition No. 9375 of 2015, Mr. Arif Doctor, learned counsel  
for the petitioner in Writ Petition No.12111 of 2015, Mr. Nitin

Deshpande, learned counsel for respondent no.1 and Mr. D.J.Dalal, learned counsel for respondent no.4 in both petitions at length.

2. Writ Petition No.9375 of 2015 is directed against the judgment and order dated 16.4.2015 passed by the learned 3<sup>rd</sup> Jt. Civil Judge, Sr. Dn., Pune below Exhibit 115 in Special Civil suit No.756 of 2001. Writ Petition No.12111 of 2015 is directed against the judgment and order dated 16.4.2015 passed by learned 3<sup>rd</sup> Jt. Civil Judge, Sr. Dn., Pune below Exhibit 122 in Special Civil Suit No 756 of 2001. By the impugned order, the learned trial Judge rejected the applications-Exhibits 115 and 122 taken out by defendant no.1 and defendant no.2 respectively for initiating perjury proceedings against the Managing Committee of the plaintiff's society and Mr. Mehernos Daruwalla.

3. The plaintiff has instituted suit against the defendants for specific performance of the individual agreements entered with the members of the present society and to convey the land described in paragraph 1(d) of the Plaint to the plaintiff society; for mandatory order directing the defendants to demolish the building described as building no.21 constructed on part of CTS No.11/1/C along with the commercial premises built thereon and convey the open land to the plaintiff; for perpetual injunction restraining the defendants from conveying the land to any other firm/body/association.

4. During the pendency of the suit, the plaintiff took out application under Order VI, Rule 17 of C.P.C. on 20.7.2013 at Exhibit 106 for amending the plaint by incorporating paragraphs 7(A) to (D). The bone of contention of the petitioner in both the petitions is that in this application the plaintiff has made patently false statement. In particular, in paragraph 4 it is asserted that “upon the scrutiny of the Additional Written Statement of defendant no.1 at Exh.102, it is revealed that out of the suit property mentioned in para 1(d) of the plaint, defendant no.2 has already conveyed a part of the same to one Ms Amita Kishore Mansukhani and that there is a commercial building built on that portion”.

5. In paragraph 5, it is asserted that “from the pleadings of defendant no.1 itself as per their additional written statement filed at Exh.102, there has been a change in the circumstances of the suit and, therefore, in order to bring on record the entire controversy before the Court it is necessary to amend the Plaint”. In paragraph 8, it is asserted that the plaintiff has moved the present application immediately on receipt of the detailed information about the change in circumstances as regards the disputed title of the suit property in para 1(d).

6. Highlighting this portion of the application Exhibit 106, Mr. Modi strenuously contended that the consent decree was passed in the year 1997. Conveyance was executed in favour of Ms.

Amita Kishor Mansukhani in February 2000. Suit is instituted in the year 2001 and the present application is moved in the year 2013 creating impression as if that the plaintiff-society acquired knowledge for the first time after defendant no.1 filed additional written statement at Exhibit-102.

7. Mr. Modi has invited my attention to letter dated 31.7.2000 addressed by Mehernos H. Daruwalla, Secretary of the plaintiff's society to defendant no.2 and in particular following paragraph:-

“Furthermore, we understand the Reservation of 3,300 sq.mtrs which housed the old structure, has been given to Mrs Amita Kishore Mansukhani upon her retirement from M/s Atur Sangtani and Associates-the builders and that the conveyance of the said 3,300 sq.mtrs. has been executed in her favour.”

8. Mr. Modi submitted that the above extracted paragraph would clearly show that the plaintiff had knowledge about conveyance of 3300 sq.meters executed in favour of Ms. Amita Kishore Mansukhani. Mr. Modi also invited my attention to notice dated 4.8.2000 addressed on behalf of the plaintiff to Ms Amit Kishore Mansukhani and in particular paragraphs 1, 3 and 6 thereof and reply dated 3.10.2000 addressed on behalf of Ms Amita Mansukhani and in particular paragraphs 6 and 8. Perusal of this reply would also indicate that the compromise decree was passed on 15.3.1997. Conveyance was executed in favour of Ms Amita Mansukhani in February 2000.

9. Mr. Modi has also invited my attention to the application

made by defendant no.1 at Exhibit-115 and reply given by the plaintiff dealing with the contents of paragraphs 4(b), 4(c), 4(d) and 4 (e). He submitted that the plaintiff did not tender apology for making false statement. On the other hand, they reiterate that the averments made in the application are truth and nothing but the truth. Mr. Doctor invited my attention to rider to letter dated 31.7.2000 wherein it is stated that the plaintiff came to know that defendant no. 2 has recently executed a Power of Attorney in favour of Mr. Lalit A. Sangtani and another as the nominees/representatives of M/s Atur Sangtani and Associates, thereby, authorizing them to convey the land bearing CTS no.11/1, Koregaon Road, Pune (except the portions thereof which have been allotted to Ms Amita Mansukhani) in favour of M/s Atur Sangtani & Associates or in favour of their nominees.

10. Mr. Doctor submitted that though the letter was addressed by the plaintiff's society on 31.7.2000, after nearly 14 years, the application for amendment is made. Even if, according to the plaintiff, no details were given, nothing prevented them from seeking clarification and they should have exchanged letters seeking their clarification.

11. On the other hand, Mr. Deshpande submitted that no false statement is made in the application for amendment. Entire application for amendment is based upon additional written statement filed by defendant no.1 at Exh.102. The learned trial

Judge has rightly held that no case for initiating perjury proceedings is made out. He, therefore, supported the impugned order and submitted that no case is made out for interfering with the impugned order.

12. 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, defendant no.1 has filed application Exh.115. Defendant no.2 has filed application at Exh.122 for initiating perjury proceedings on the ground that in application dated 20.7.2013 made by the plaintiff at Exh.106 under Order VI Rule 17 of C.P.C. false statements on oath are made by the plaintiff. In order to appreciate the controversy between the parties, it is necessary to reproduce paragraphs 3,4, 5 and 8 of the application:

“3. The plaintiff submits that defendant no.1 has filed its Additional Written Statement to the amended plaint on 28<sup>th</sup> February, 2013 at Exh.102.

4. It is further submitted that, upon the scrutiny of the Additional Written Statement of the defendant no.1 at Exh.102, it is revealed that the out of the suit property mentioned in para 1(d) of the plaint, the defendant no.2 has already conveyed a part of the same to one Mrs Amita Kishore Mansukhani and that there is a commercial building built on that portion.

5. It is clear from the pleadings of the defendant no.1 itself as per their additional written statement filed at Exh.102 that there has been a change in the circumstances of the suit and, therefore, in order to bring on record the entire controversy before the Hon'ble court, it is necessary to amend the plaint.

8. The plaintiff has moved the present application immediately on receipt of the detailed information about the change in circumstances as regard the disputed title of suit property in para 1(d). The plaintiff has taken all due care and caution and there is no delay in filing the present application. The present amendment is necessary in order to correctly adjudicate the dispute between the parties. The present amendment in no way changes the nature of the suit. If the amendment is allowed, the defendants will not suffer any loss whatsoever. The defendants will have every opportunity to state its say on the present application. If the present amendment is not allowed, the plaintiff will suffer tremendous loss, and it will lead to multiplicity of proceedings and unnecessary delaying the matter.”

13. Perusal of the application shows that this application is based on the additional written statement filed by defendant no.1 at Exh.102. Perusal of paragraph 4 shows that the submission is based upon additional written statement filed by defendant no.1. Perusal of paragraph 5 of the application also indicates that the submissions are based upon additional written statement filed by defendant no.1. During the course of hearing of the petitions, I made query as to whether defendant no.1 has pleaded these points in the additional written statement and the answer was in the affirmative. In other words, it is not the case of the petitioner that though the written statement of defendant no.1 does not set out these contentions, still representation is made in paragraphs 4 and 5 of the application contrary to the contentions in additional written statement of defendant no.1. Thus, the assertions made in paragraphs 4 and 5 are borne out from the additional written statement filed by defendant no.1.

13. In the impugned order, the learned trial Judge has considered this aspect in paragraphs 18 and 19. In paragraph 19, the learned trial Judge has observed that “the suppression or concealment of fact cannot be considered as a false statement. The words “suppression and concealment” indicate that the person having knowledge is not stating those facts. Section 191 Indian Penal Code, 1860 requires that the person must state a fact and the said fact must be false and that he is aware about the same. Therefore, merely Mr Daruwalla has suppressed the facts is not sufficient to initiate action of perjury.”

14. Section 191 I.P.C. reads thus;

**“191. Giving false evidence.-** Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.--A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.--A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.”

15. In view thereof, at the highest what can be said against the plaintiff is that the plaintiff has suppressed the facts or acquiring knowledge about the conveyance executed in favour of Ms Amita Mansukhani. However, that will not constitute a false statement so as to initiate perjury proceedings under section 191

I.P.C. Understood thus, no case is made out for interfering with the impugned order in exercise of powers under Article 227 of the Constitution of India. Petitions fail and the same are dismissed.

16. It is expressly made clear that the observations made herein are made only for the purpose of considering correctness of the impugned order and the learned trial Judge will decide application for amendment at Exh.106 on the basis of material on record and on its own merits in accordance with law and uninfluenced by the observations made in the impugned order and in this order. Order accordingly.

(R.G.KETKAR, J.)