

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7248 OF 2016

Sudhakargaud S/o Govindgaud Motiwar	Petitioner
Versus	
Smt. Suguna Nandala w/o Narsimulu Nandala	Respondent

Mr. U.B. Bilolikar advocate for the petitioner
Mr. Ajinkya Reddy h/f P.P.Kampale Advocate Respondent

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 10th July, 2017.)

PER COURT :-

1 The petitioner is aggrieved by the order dated 2.3.2016, passed by the Trial Court, thereby partly allowing the Application Exhibit 59, permitting the original defendant to amend his written statement, only to the extent of replacing the date of agreement to sale 25.8.2008 with 25.8.2009. However, the grievance of the petitioner is that, the proposed amendment for introducing two witnesses Purushottam Gadewad and Kiran Gaikwad in place of Maroti Amberay and Santosh Gaud has been rejected.

2 The strenuous contention of the learned counsel for the petitioner is that the agreement to sell dated 25.8.2009 mentions the attesting witnesses as Maroti Amberay and Santosh Gaud. However, in the written statement under paragraph 15(2), it is

wrongly mentioned that Maroti Amberay and Santosh Gaud were witnesses to the payment of earnest money of Rs.50,000/-, for which a receipt has been executed by the plaintiff. It is canvassed that in place of Maroti Amberay and Santosh Gaud, names of Purushottam Gadewad and Kiran Gaikwad have been mentioned as the witnesses to the payment and executing the receipt.

3 The stage in the suit is vital, in the peculiar facts of this case and the grievance put forth by the petitioner. The plaintiff has already stepped into the witness box and has been cross-examined. The Trial Court has recorded in the impugned order that no question or suggestion was put to the plaintiff that Purushottam Gadewad and Kiran Gaikwad were witnesses, in whose presence the earnest money of Rs.50,000/- was paid by the defendants to the plaintiff.

4 It is conspicuous that the defendant desires to amend the written statement for introducing the two witnesses, whose names did not find place in the written statement and more particularly in the cross-examination of the plaintiff. If the plaintiff would have been confronted with the names of these two witnesses, one could have accepted that the names of Maroti Amberay and Santosh Gaud are inadvertently mentioned in the written

statement as witnesses to the payment of earnest money. If none of these names have been put forth in the cross examination and if the plaintiff has not been confronted with these two names, the application for amendment is virtually made as the defendants desire to introduce two new witnesses.

5 It is in the light of above that the Trial Court has rightly rejected the application for amendment.

6 It is not in dispute, even going by the Photostat copy of the receipt of payment, that the name of Purushottam Gadewad and Kiran Gaikwad are not mentioned as witnesses on the receipt.

7 Considering the above, this petition being devoid of merit is dismissed.

8 By the interim order of this Court dated 2.8.2016, the suit was stayed by directing the petitioner to deposit an amount of Rs. 5,000/- before the Trial Court. The said suit has been stayed for practically 12 months at the behest of the petitioner. As such, the amount deposited before the trial Court shall be withdrawn by the plaintiff, without conditions.

(RAVINDRA V. GHUGE , J)