

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 8063 OF 2016

Shri Sudhakar Babanrao Tekawade
Age : 40 years, occupation : Labour,
R/o : Komti Galli, Newasa Khurd, ... Petitioner/
Tq. Newasa, Dist. Ahmednagar Orig. Plaintiff

versus

1. Najamabee Yusuf Shaikh,
Age : 50 years, occup. Household,
R/o : Vadar Galli, Near Komti Galli,
Newasa Khurd, Tq. Newasa,
Dist. Ahmednagar
2. Yusuf Fattu Shaikh,
Age : 57 years, occup. Business, ... Respondents/
R/o as above Orig. Defendants

Mr. Vijay B. Jagtap, Advocate for petitioner
Mr. Z. M. Pathan, Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.
DATE : 14th August, 2017

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard learned counsel for petitioner and learned counsel for respondents finally by consent.

2. Petitioner - original plaintiff challenges order dated 02-05-2016 under which his application Exhibit - 27 seeking amendments to the plaint in special civil suit no. 11 of 2015 has been rejected by civil judge, senior division, Newasa.

3. Learned counsel submits that the impugned order suffers under parochial view taken by the court while considering the application Exhibit - 27 for amendments when the law as it would appear shows, a liberal view is to be generally adopted in the cases of amendments.

4. He submits, while boundaries have been specified in the agreements for sale yet, the learned judge has overlooked the same and has observed that no boundaries are given in the agreements for sale. He further contends that it is on too technical ground the application has been refused to be granted viz. the same has been moved after framing of issues and the matter had been posted for evidence. He submits, as a matter of fact, the petitioner as yet has not been examined himself in the court. As such, it cannot be said that the trial has in strict sense commenced. He, therefore, seeks indulgence and prays to allow writ petition.

5. Countering aforesaid submissions, Mr. Pathan, appearing on behalf of respondents submits that there is no due diligence

shown by petitioner in filing the application Exhibit – 27 as neither after notice issued seeking specific performance of agreement nor after written statement has been filed till the matter had been ripe for trial, the application had been moved. He submits that since the stage of trial had commenced, the court had approached the matter in accordance with provisions as would be applicable particularly having regard to proviso to Order VI, rule 17 of the Code of Civil Procedure, 1908

6. He further purports to contend that there is no specific reference to the areas of the suit properties in the agreements of sale, yet the same may find place in the plaint. He, therefore, submits that it is not a fit case whereunder discretionary powers of this court are required to be exercised.

7. I have heard learned counsel as aforesaid. One may have to give regard to that while the agreements for sale which have been placed on record as appended to writ petition, to quite a large extent, appear to refer to boundaries of the properties, the observation of the court about them not being appearing in the agreements for sale would not be proper observation and further having regard to that the evidence is yet to commence and application has been moved before its communication, it does not appear to be a case wherein stricter approach is required to be taken.

8. In the circumstances, it is deemed it appropriate and in the interest of the parties to allow application Exhibit – 27, keeping in view that in the matters of amendments, the court may adopt a liberal approach.

9. As such, writ petition stands allowed. The impugned order 02-05-2016 passed by civil judge, senior division, Newasa, rejecting petitioner's application Exhibit - 27 seeking amendments to the plaint in special civil suit no. 11 of 2015 is set aside. Application Exhibit – 27 stands allowed.

10. Rule made absolute in aforesaid terms. Writ petition stands disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd