

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

WRIT PETITION NO.1490 OF 2014

Mr.Mukesh Keshavlal Shah .. Petitioner
V/s.
Mr.Raghunath Maruti Raut & Ors. .. Respondents

Mr.Avinash H. Fatangare for the Petitioner.

Mr.Pradeep D. Dalvi for Respondent No.1.

Mr.A.R. Metkari, AGP for Respondent No.8-State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 29th NOVEMBER 2017

P.C.

1. Heard.

2. Rule. Rule made returnable forthwith with the consent of the parties.

3. The petitioner happens to be plaintiff in Special Civil Suit No.434 of 2010. The said suit was instituted on 29th September 2010. The summons were issued to the defendants which were served upon the defendants on 01-10-2010. On 19th October 2010 the defendants had caused their appearance. It was submitted by the defendants in their written statement that the property which was a subject matter of the agreement dated 05-04-2010 was sold on 12-10-2010.

4. In view of this the plaintiff had filed an application under Order VI Rule 17 seeking amendment of the plaint and to implead the subsequent purchasers as party defendants. It is a matter of record that besides the agreement dated 05-04-2010 the plaintiff was also seeking amendments to the plaint in respect of the other issues. The learned Civil Judge Senior Division, Kalyan, by an order dated 22nd October 2013 had rejected the said application. The learned Court has erroneously observed that the common man will say that when the suit was filed, the interest of third party was already there against the plaintiff. In view of the same case of apprehension of the third party pleaded by the plaintiff for amendment is not acceptable. It appears that the learned Court was considering all the issues in the application seeking amendment to the plaint. Therefore, plaintiff has made it clear that the said fact of creating third party interest was brought on record by the defendants only after their reply to the application below Exh.5.

5. The learned counsel for the respondent submits that infact the plaintiff was seeking amendment in respect of many other issues which would change very complexion of the suit and hence the application was not maintainable.

6. Taking into consideration the facts of the case, the order dated 22nd October 2013 deserves to be quashed and set aside. However, at this stage it is made clear that the plaintiff is granted liberty to amend the plaint only as far as the agreement dated 05-04-2010 is concerned and the property which is a subject matter of the agreement dated 05-04-2010 and no other issues beyond that.

7. The learned counsel for the petitioner submits that in any case the application seeking amendment under Order VI Rule 17 is only restricted to the agreement dated 05-04-2010 and therefore it is not necessary to consider any other amendment as pleaded in the said application and as a consequence the plaintiff would be at liberty to pray that the sale deed dated 12-10-2010 would not be binding upon the plaintiff since, the defendant had created third party interest only after institution of the suit. The Court may permit the consequential amendment to that effect.

8. Rule is made absolute.

9. The Petition is allowed in the above terms.

(SMT. SADHANA S. JADHAV, J.)