

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

**WRIT PETITION NO.2053 OF 2013
WITH
CIVIL APPLICATION NO.2693 OF 2017**

Shri Pandurang Laxman Mandekar

...Petitioner

vs.

Shri Nattu Sattu Phale & Ors.

...Respondents

Mr. Shriram S. Kulkarni for the Petitioner.

Mr. Shailendra S. Kanetkar for Respondent Nos.1 to 3.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 27th November, 2017

P.C.:

Heard. Rule. Rule is made returnable forthwith with the consent of the parties.

2. The Petitioner happens to be the original Plaintiff in Regular Civil Suit No.556/1997. The Respondent is the original Defendant. It was the contention of the Plaintiff that the Defendant is a trespasser and he has sought peaceful and vacant possession of the plot of land where the Defendant had constructed the house. The Respondent has filed the written statement contending that the Defendant had purchased the said piece of land from the brother of the Plaintiff on 11/12/1980 for consideration of Rs.650/-. It was specifically contended that he had purchased the property and by virtue of the sale Deed had constructed the house which was shown as suit property. It was reiterated further that since the execution of the sale Deed the Defendant happens to be in peaceful possession of the suit property. Ownership of the house was recorded in the Gram Panchayat extract also. The suit was decreed by a judgment and order dated

4/12/2009.

3. Being aggrieved by the same the Respondent Defendant had filed Civil Appeal No.206/2010 before the District Judge, Pune and also had filed an application on 21/11/2012 stating therein that his admission in the written statement stating that he had purchased the said plot of land from the brother of the Plaintiff and by virtue of the sale Deed constructed a house should be deleted and it should be read that it was not a sale Deed but the Defendant/Appellant was a licensee. It was specifically contended that the advocate representing the Respondent had read irrevocable license as a copy of the sale deed. The interpretation was made by the advocate representing the Defendant. It was therefore prayed that there should be amendment to the written statement and instead of sale Deed the document be read as permanent grant or license. It is further pertinent to note that the said document was on record. The learned Appellate Court by order dated 8/1/2013 was pleased to allow the application seeking amendment and had saddled the Appellant with the cost of Rs.1,000/- to carry out the amendment.

4. The learned Appellate Court had observed that under Order 6 Rule 17 of the Code of Civil Procedure the cause of action in the present case for moving the said application is not arising and amendment can be permitted at any stage and, therefore, the Court was of the opinion that the proposed amendment is not only helpful to the parties themselves but also help the Court while deciding the interpretation as is formed and intention behind it while executing the same. The learned Appellate Court had followed the rule of liberal construction of the pleadings and had allowed the application.

5. Heard respective counsel at length. It is pertinent to note that

the document on the basis of which the Defendant seeks to place implicit reliance and submits that this is a matter of interpretation dated 11/12/1980 was filed on record in the suit. The executant of the said document was Nathu Santu Phale. The Defendant did not step into the witness box and had not proved the document dated 11/12/1980. The Defendant had also not called upon any witness to the said document and therefore, the said document could not be read in evidence. It is in these circumstances that the said document cannot be read at a belated stage and therefore there is no question of interpreting the said document or the nature of possession of Defendant No.1. It is further pertinent to note that there was no ground raised in the appeal memo about the said controversy.

6. As of today the learned counsel for the Respondent submits that the Defendant is at liberty to take contrary defence to the written statement as long as they are not self destructive. In the present case it was the case of the Plaintiff that the Defendant happens to be a trespasser on the said land whereas in the initial written statement the Defendant had claimed title on the basis of the sale Deed and wanted it to be substituted by the word licensee. The contentions are not only contrary but are self-destructive. Hence the Appellate Court ought not to have allowed the same.

7. For the reasons stated herein above the petition deserves to be allowed. Rule is made absolute. Order dated 8/1/2013 passed by the District Judge, Pune is hereby quashed and set aside.

(SADHANA S. JADHAV, J.)