

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION No. 7331 OF 2016

Sau. Subhadra Baban Phadtare

.....Petitioner

V/s.

Shri. Shankar Bhau Pawar and ors

....Respondents

Mr. Shriram S. Kulkarni Advocate for Petitioner.

Mr. Rakesh Sawant Advocate for Respondent no. 1.

CORAM : Mrs. MRIDULA BHATKAR, J.
DATED : JULY 26, 2017.

PC :

Not on board. Upon urgent mentioning, taken on board.

1) Rule. Rule made returnable forthwith. By consent, petition is heard finally and decided at the stage of admission.

2) This writ petition is directed against the order dated 02/12/2015 passed by 2nd Jt. Civil Judge Senior Division, Koregaon below Exhibit 70 in Regular Civil Suit No. 60 of 2006 at Koregaon. The petitioner, the original plaintiff, has filed the suit for re-conveyancing in the year 2006. Written statement is filed, issues are settled. Thereafter, plaintiff/petitioner moved application

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under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for the amendment of the plaint. The said application was contested and it was rejected by the learned trial Judge and hence, this writ petition.

3) By way of amendment, the plaintiff seeks to delete the words “towards interest” In vernacular (व्याजापोटी) and wants to add certain words in paragraph 3 of the plaint.

4) The learned counsel for the petitioner has submitted that while rejecting the application, the learned trial Judge has committed error in not taking into account that the plaintiff has already pleaded the case of re-conveyancing and also relied on the document of re-conveyance. Thus, in order to make the case consistent with the other pleadings, the prayers and the documents relied upon, the plaintiff wants to amend the plaint. He further submitted that as the evidence in the suit has not yet commenced, this amendment should have been allowed. The learned counsel submitted that while preparing the evidence, it was found that this amendment is necessary to make the case of the plaintiff more specific and clear and therefore, at this stage, the application was made.

5) The learned counsel for respondent no. 1 is the main contesting party submitted that by way of this amendment, the constitution of the plaint is going to change. The plaintiff has a different case earlier and if this amendment is allowed, then the plaintiff is likely to change his stand. It is further submitted that the defendant have already filed a written statement and made their defence open. He therefore, submitted that it is a second round of litigation which respondent no. 1 is facing. Earlier, the plaintiff moved an application for amendment of the plaint which was allowed and this is a second amendment application. He further states that plaintiff wants to protract the trial.

6) Heard the submissions. Perused the complaint. Perused schedule of the proposed amendment and the order.

7) By way of amendment, plaintiff seeks addition and deletion of two words. It appears that plaintiff has pleaded a case based on re conveyancing and has also pleaded that at the relevant time, mortgage was not permissible. Hence, deed of re conveyancing was executed. After going through all the

documents and prayer, I am of the view that this amendment can be allowed as evidence has not yet commenced. The submissions of the learned counsel that earlier such application was preferred but at the time of commencement of evidence, it was noticed, can be accepted.

8) Rule is made absolute accordingly with following order.

- (a) Amendment is allowed subject to cost of Rs. 5,000/- to be given to respondent within 2 weeks from today.
- (b) Respondent no. 1 may file additional written statement.
- (c) The trial court to expedite the matter and conclude the same, preferably within one year. All contentions are kept open.
- (d) Writ petition stands disposed of.

(MRIDULA BHATKAR, J.)