

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

WRIT PETITION NO.8190 OF 2013

Mansukhlal Jethalal Shah & Ors. ... Petitioners

Vs.

Smt.Ishani Sham Ajmera & 20 Ors. ... Respondents
(Respondent Nos.1 to 19 are deleted
vide order dated 18.11.2015)

Mr.M.M. Sathaye for Petitioners
Mr.Vishal S. Tambat for Respondent No.20

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 19, 2017**

P.C. :

1. By this petition, the petitioners challenge the order dated 3.4.2013 passed by 6th Joint Civil Judge Senior Division, Nasik below thereby partly allowing the application for amendment of the plaint made under Order 6 Rule 17 of the Civil Procedure Code. The plaintiff has filed the suit bearing Suit No.270 of 2008, initially for perpetual injunction. Defendant No.20 i.e., Respondent No.20 is the man contesting party, who was given contract to construct buildings on the suit land. He did not file written statement and therefore, the trial Court passed the order of 'no W.S.'. The plaintiffs filed an affidavit in lieu of examination in chief. Thereafter,

on the application of defendant No.20, 'no W.S.' order was set aside and allowed the written statement to be filed. He filed the written statement whereafter additional issues were framed and the plaintiffs moved an application for amendment of the plaint. The amendment application seeking amendment to paragraph 5 of the plaint and also paragraph 7A of the amendment application in prayer clause 1A seeking declaration was allowed. However, the amendment in respect of substitution of paragraph 6 so also additional paragraph 6A and replacement of paragraph 7 was not allowed. Being aggrieved with this order allowing the amendment application partially, this petition is filed.

2. The learned Counsel for the Petitioners has submitted that the amendment is sought well within time. The plaintiffs have pleaded a specific case in the plaint that defendant No.20 is a contractor who remained on the property even though his contract was terminated and he is trying to dispose of the suit property alongwith their respective flats to third party and therefore, the injunction that he should not create third party interest was sought and thereafter, the prayer for declaration that defendant No.20 has no interest and title in the suit property is sought and allowed. He

further submitted that in paragraph 6, he has pleaded certain facts and consistent with that, he wants to add more details and explain whatever he has pleaded in paragraph 6 by substituting the new paragraph. He further submitted that in paragraph 6A and paragraph 7 of the application, he has quoted specific instances of how defendant No.20 is trying to dispose of the properties in the suit buildings and that the trial Court ought to have allowed those amendments.

3. The learned Counsel for respondent No.20 has while opposing this petition, has supported the order passed by the learned trial Judge of disallowing the amendment application in part. He submitted that he is still in possession of the suit property and he has a good case to prove his title and interest in the sit property which is the subject matter of trial and evidence. He further submitted that if the proposed amendments are allowed which will change the nature of the suit and hence, the petition is to be dismissed.

4. The learned Counsel for the Petitioners has taken me to the relevant paragraphs of the plaint which are intended to be substituted by paragraphs 6 and 7 so also paragraphs 6A in the

amendment application. The proposed amendments do not change the nature of the suit. Considering the averments made in the plaint and so also the original prayer of injunction and the added prayer of declaration, I am of the view that in paragraph 6, the petitioners have given better particulars of the earlier pleadings and therefore, I allow the old paragraph 6 to be replaced and substituted by new paragraph 6 in the amendment plaint. However, paragraph 6A and the latter half portion of the paragraph 7 is found irrelevant to the prayers made by the plaintiffs. The latter half portion of paragraph 7 in the proposed amendment starts with the words *"After two days, plaintiff No.1 who is a very old person noticed that several people visited his flat in his presence and hence, the plaintiffs have approached the honourable Court for proper reliefs"*, is allowed.

5. Thus, the petition is disposed of with the following order:

- i) The Writ Petition is partly allowed.
- ii) The new paragraph 6 is substituted for the old paragraph 6.

- iii) The latter portion of the paragraph 7 which is mentioned above is allowed to be added in paragraph 7 as a continuation of paragraph 7.
- iv) The amendments shall be carried out within two weeks from today and amended copy shall be served on the respondent No.20.
- v) Respondent No.20 shall file the written statement on or before 15.6.2017.

(MRIDULA BHATKAR, J.)