

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11053 OF 2017

The Municipal Commissioner
Sangli, Miraj and Kupwad Municipal
Corporation, Sangli ...

Petitioner

Vs.

Shri Ganapati Panchayatan Sansthan & Anr. ...

Respondents

Mr.G.H.Keluskar, for the petitioner

Mr.Yogesh Sankpal, for the respondent No.1.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 11th October, 2017.

P.C.

Heard. Rule. Returnable forthwith with consent of the parties.

2. The petitioner herein happens to be the original defendant No.1 in Special Civil Suit No.115 of 2010. The plaintiff had filed an application seeking amendment in the plaint and the amendment was only restricted to inserting the words “bearing City Survey No.344” The defendant No.1 had filed the reply to the said amendment application. The learned 2nd Joint Civil Judge, Senior Division, Sangli, by an order dated 14.6.2017 was pleased to allow the application seeking amendment. In fact, it was not an amendment but furnishing of better particulars and the specification of the suit property.

3. In para 3 of the said order, it was observed that defendant No.1 has not filed Say and the application has proceeded against it without say. defendant no.2 filed his say Exhibit 60 and resisted the application.

4. It is pertinent to note that on perusal of the record, it appears that Exhibit 60 is the say filed by the original defendant No.1 and not by defendant No.2. In fact, there is a reference to the say in paras 8 and 9. However, according to the learned counsel for the petitioner, it cannot be said that the objections raised by defendant No.1 were considered in its proper perspective. In para 9 of the order, the learned Judge has given an opportunity to the respondent to submit his written statement and also that amendment would not cause prejudice to the rights of any of the parties. In view of the observations of the learned Judge, in the interest of justice, it would be appropriate to remand the matter for reconsideration and observation that in fact the defendant No.1 has filed his say and the same shall be considered in the interest of justice.

5. The order dated 14.6.2017 passed by the 2nd Joint Civil Judge, Senior Division, Sangli, is hereby quashed and set aside. In fact, the learned Civil Judge has rightly observed that the amendment would not cause any prejudice to the parties. However, only for considering the say of the defendant No.1, the matter is being remanded without going into the

merits of the matter or the proposed amendment. The application seeking amendment be decided afresh after considering the say of defendant No.1 and shall be decided within four weeks from the date of receipt of this order.

6. The Petition is allowed and disposed of in the above terms.

[SMT. SADHANA S.JADHAV, J.]