

Balasaheb Priraji Pansare	...	Petitioner
Vs.		
Haribhau Raghunath Tilekar and another	...	Respondents

Mr. S. V. Sadavarte for Petitioner.
Mr. Sandip Thorat for Respondents.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 23, 2017

Heard Mr. Sadavarte, learned Counsel for petitioner and Mr. Thorat, learned Counsel for respondents at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'plaintiff', has challenged the Judgment and order dated 15.10.2016 passed by the learned 3rd Joint Civil Judge, Junior Division, Khed below Exhibit-70 in Regular Civil Suit No.37 of 2012. By that order, the learned trial Judge has rejected the application made by the plaintiff under Order VI, Rule 17 of C.P.C. for amending the plaint.

3. Plaintiff has instituted such for cancellation of the sale deed dated 9.8.2007 executed by defendant No.1- Haribhau Raghunath Tilekar in favour of defendant No.2- Govind Tulshiram Yelwande. The plaintiff has contended that Gat No.744 situate at Mauje Nighoje, Taluka Khed, District Pune was admeasuring 3 Hectares 92 Ares. Out of that, 44 Ares was acquired for rehabilitation leaving area of 3 Hectares 48 Ares. 3 Hectares 48 Ares was divided among defendant No.1, his brother Narayan and his nephew Avinash and Ganesh. Each was allotted 1 Hectare 16 Ares. Plaintiff came with the case that defendant No.1

agreed to sell 36 Ares to the plaintiff after he sold 80 Ares by executing sale deed in favour of the plaintiff. Even Avinash and Ganesh executed sale deed in favour of the plaintiff's wife Baby Pansare and 2 others on 21.11.2002. Avinash and Ganesh also agreed to sell remaining 36 Ares by executing Visar Pawati dated 04.09.2007. By the proposed amendment, plaintiff wants to bring on record Visar Pawati executed by Avinash and Ganesh in respect of 36 Ares on 04.09.2007 and execution of the sale deed on 15.10.2007 after filing of the Suit. By the impugned order, the learned trial Judge has rejected the application on the ground that the proposed amendment is in respect of sale deed executed by Avinash and Ganesh in favour of the plaintiffs and two others which is not subject matter of the suit. The learned trial Judge further observed that the trial has commenced and, therefore, there is no reason to allow the amendment.

4. In support of this Petition, Mr. Sadavarte invited my attention to paragraph 2 of the plaint. In paragraph 2, plaintiff specifically asserted that on 04.09.2007, Avinash and Ganesh executed earnest receipt (Visar Pavati). They agreed to sell 36 Ares to the plaintiff. He submitted that by the proposed amendment, plaintiff wants to bring on record that at his instance, Avinash Tilekar and Ganesh Tilekar executed sale deed on 15.10.2007 in favour of Baby Balasaheb Pansare, Sunita Kailas Pansare and Sangita Kiran Pansare. As the said development had taken place after filing of the Suit, it is necessary to bring on record these facts to establish the case of the plaintiffs for relief in terms of prayer clause (b), namely, specific performance of contract in respect of 36 Ares which was allotted to the share of defendant No.1 Haribhau and described in paragraph 1(B) of the plaint. The learned trial Judge however rejected the application on the ground that trial has commenced and no case of due diligence is made out by the plaintiff. As the said development took

place after filing of the Suit, the learned trial Judge was not justified in not rejecting the application on that ground.

5. On the other hand, Mr. Thorat supported the impugned order.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The question is whether the proposed amendment is necessary for resolving the controversy between the parties. Perusal of the plaint shows that plaintiff had sought cancellation of the sale deed dated 09.08.2007 executed by defendant No.1 in favour of defendant No.2 whereunder property described in paragraph 1-B was sold by defendant No.1 to defendant No.2. Plaintiff has sought specific performance of property described in paragraph 1-B of the plaint. In other words, the subject matter of the proposed amendment is not the subject matter of the Suit. Merely because at the instance of plaintiff, Avinash Tilekar and Ganesh Tilekar executed sale deed on 15.10.2007, will not otherwise advance the case of the plaintiff for relief of cancellation of the sale deed and for specific performance of contract. Independent of this transaction, plaintiff will have to establish his case. In short, the proposed amendment is absolutely not necessary for deciding the controversy raised in the present Suit. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, Petition fails and the same is dismissed. Needless to observe that the trial Court will decide the Suit on the basis of evidence on record and on its own merits and in accordance with law, uninfluenced by the observations made in the impugned order and this order.

7. It is also made clear that where a decree is challenged by the

petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proceedings as contemplated by Section 105(1) of C.P.C. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab