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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 198 of 2017

Suresh Keshavrao Yadav ..Petitioner
Vs.
Vishwanath Nivrutti Deokar & Ors ..Respondents

Mr.D.S. Patil for the petitioner.

Mr. R.D. Soni i/by Ram & Co. for Respondent No.11.

Mr. Jaydeep Deo for Respondent No. 20 (I) to 20 (ix).

CORAM : RAJESH G. KETKAR, J.
DATE : 16th March, 2017.

P.C.

1. Heard Mr. Patil, learned Counsel for the petitioner and Mr. Deo, learned Counsel for respondents No. 20 (i) to 20 (ix) and Mr. R.D. Soni, learned Counsel appearing for Respondents No. 21 and 22, at length.

2. Mr. D.S. Patil seeks leave to delete rest of the respondents as respondents No. 20 (i) to 20 (ix) and Respondents No. 21 and 22 are only the contesting respondents. On the motion made by Mr. Patil leave to delete as prayed for is granted. Amendment shall be carried out forthwith.

3. 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 08.11.2016 passed by the learned 7th Joint Civil Judge, Senior Division, Pune below exhibit-194 in Special Civil Suit No.544 of 2007. By that order, the learned trial Judge rejected the application made by the plaintiff under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the plaint. Plaintiff has instituted Special Civil Suit No.544 of 2007 inter alia praying for specific performance of agreement dated 02.11.1994 in respect of land described in paragraphs No.1A to 1D and for direction to defendants No.1 to 22 to execute the sale deed of the suit lands in favour of the plaintiff, among other directions. During the pendency of the Suit, plaintiff took out application exhibit-194 under Order VI, Rule 17 of C.P.C. for amending the plaint. By the proposed amendment, plaintiff wants to correct the typographical error and also add paragraph 13(a) for elaborating his averments as regards readiness and willingness. Plaintiff has also added prayer claiming damages in the event of Court declining to grant relief of specific performance.

4. Defendants No.20(i) to 20(ix) opposed the application by filing their say at exhibit-196. Defendants No.21 and 22 also filed their say at exhibit-197 opposing the application. After hearing both the sides, the learned trial Judge rejected the application. It is against this order, plaintiff has preferred present Writ Petition.

5. Rule. Learned Counsel for the respective respondents waive service. Having regard to the narrow controversy raised in this petition, as also, at the request and by consent of parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

6. In support of this Petition, Mr. Patil has taken me through the proposed amendments. In so far as the amendment proposed in paragraph 3(I) is concerned, he submitted that earlier, plaintiff instituted Suit against defendant No.21 as 'M/s. Bramha Developers'. The same is now changed to 'M/s. Sky Reality', and therefore, the name of defendant No.21 may be corrected from 'M/s. Bramha Developers' to 'M/s. Sky Reality'. As far as the proposed amendment in paragraph 3(II) is concerned, he is not pressing that amendment. As far as the proposed amendments in

paragraphs 3(III) to (V) are concerned, he submitted that the same being the typographical error may be allowed.

7. As far as incorporating paragraph 13(a) after paragraph 13 is concerned, he submitted that plaintiff proposed to elaborate averments as regards readiness and willingness. He submitted that in paragraph 12 of the plaint, plaintiff has already made averments as regards readiness and willingness. The amendment proposed in paragraph 13(a) may be allowed.

8. He submitted that in addition to the relief of specific performance, by the proposed amendment, in the alternative, plaintiff is claiming relief of damages. He submitted that in view of Section 22 of the Specific Relief Act, 1963, the said claim can be allowed at any stage.

9. Mr. Soni has invited my attention to the proposed amendments, more particularly of incorporation of paragraph 13(a). He submitted that apart from pleading readiness and willingness, in the proposed amendment, plaintiff is also enlarging the scope of pleading. He, therefore, submitted that if the Court is inclined to allow amendment in terms of paragraph 13(a), plaintiff may be directed to restrict his

evidence in respect of his readiness and willingness and should not enlarge evidence while deposing readiness and willingness.

10. The matter was heard at length on earlier occasion and was kept for further hearing on 2nd February, 2017. On that day, Mr. Patil upon taking instructions, stated that in the event of Court allowing the amendment, the plaintiff does not intend to lead evidence with respect to the sale deeds dated 2/9/2008, 10/12/2009, 29/12/2009, 31/12/2009 and 4/8/2010. Mr. Patil made the statement in view of the decision of this Court in the case of **Dilip Bastimal Jain Vs. Baban Bhanudas Kamble, 2001 (4) Bom. C.R. 374**. That statement was accepted on 2nd February, 2017.

11. With the assistance of the learned Counsel appearing for the parties, I have gone through the proposed amendment. As far as the amendment proposed in Paragraph 3 (I) is concerned, the plaintiff wants to change name of defendant No.21 from M/s Brahma Developers to M/s Sky Reality. The learned Counsel appearing for the respondents have not seriously disputed this amendment. Mr. Patil has not pressed amendment as proposed in Paragraph 3 (II). As far as proposed amendment in Paragraph 3 (III) to (V) are

concerned, the same are typographical errors. The learned Counsel for the respondents have not seriously disputed this fact. As far as incorporating Paragraph 13 (a) is concerned, the plaintiff has already made averments as regards readiness and willingness in Paragraph 12 of the unamended plaint. As per Section 22 of Specific Relief Act, 1963 relief of damages can be claimed at any stage. In view thereof, in my opinion, the application deserves to be allowed.

12. Having regard to the submissions of Mr. Soni that the plaintiff is enlarging the scope of pleadings as regards willingness, respondents No. 21 and 22 are at liberty to raise such objections that are available to them during the course of evidence of the plaintiff. The learned Trial Judge will deal with the objections keeping in mind the provisions of Order XIX Rules 4 and 5 of C.P.C. Rule is made absolute accordingly with no order as to costs.

13. Having regard to the fact that the Apex Court has directed this Court to dispose of the appeal expeditiously, this Court has also directed the learned Trial Judge to dispose of the suit within a period of eight months from the order of this Court dated 1st July, 2016 reaching the Trial Court. It is

expected that the learned Trial Judge will adhere to the time schedule framed by the order of this Court and will dispose of the suit in time bound manner. Order accordingly.

(R.G. KETKAR,J)