

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

WRIT PETITION NO. 2816 OF 2017

M/s.Rashmi Properties

...Petitioner

Versus

Shri Pyarasaheb Keshrisingh Rana
(since deceased) through his legal heirs
Shri Sajid Pyarasaheb Rana & Ors.

...Respondents

.....

Mr.Sandeep Mishra for the Petitioner.
Mr.S.B.Pawar a/w Ms.Shravni Dalvi i/b. S.K.Legal Associates for
Respondent No.2.
Mr.Dhananjay C.Pathak for Respondent No.4.

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CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 23, 2017

P.C. :

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

2. This petition is directed against the order dated 09.11.2016 passed by the learned 11th Jt. Civil Judge, Senior Division, Thane in Regular Civil Suit No. 516 of 2014 thereby rejecting the application filed by the petitioner/original plaintiff under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for carrying out an amendment in the cause title of the plaint. The petitioner/original plaintiff had filed a Suit in the capacity of a proprietary partnership firm and now wants to change the cause title from partnership firm to a sole proprietary concern.

3. The learned counsel for the petitioner submits that the amendment sought is only in the cause title of the Regular Civil Suit which ought to have been allowed by the learned trial Judge. He further submits that earlier it was typographical mistake, which occurred due to inadvertence and now he wants to correct it. He further submits that a Deed of Rectification dated 14.05.2015 was executed between the plaintiff and Shri Pyarasaheb Keshrisingh Rana through its constituted attorney. Pursuant to the said Deed of Rectification, he has moved an application for amendment. He further submits that after amendment the issue in respect of maintainability can be raised and framed by the Court and then it is a burden on the petitioner/plaintiff to satisfy the Court whether this is a partnership firm or a proprietary concern. He further submits that the agreement which was subject matter, on which the Suit is based, in that also by mistake M/s. Rashmi Properties is described as a partnership firm and therefore, the said mistake was carried forward.

4. The learned counsel for respondent no.2, who is main contesting party submits that the amendment as sought is an after thought and deliberate the Memorandum of Understanding dated 02.8.2003, which was entered into between the original owner and the petitioner/plaintiff

discloses the status of M/s. Rashmi Properties as a partnership firm. He further submits that a Deed of Conveyance was executed on the basis of Irrevocable General Power of Attorney and at the relevant time, respondent no.1 was dead. He further submits that the defendants have raised main defence under section 69 of the Partnership Act and they supported the order dated 09.11.2016 passed by the trial Court.

5. Perused the plaint. On perusal of the order dated 09.11.2016 passed by the learned trial Judge, it appears that the deceased Pyarasaheb Keshrisingh Rana had executed the Irrevocable General Power of Attorney in favour of M/s. Rashmi Properties, a partnership firm and Hemendra Bosmia as its partner. However, the Memorandum of Understanding dated 02.08.2003 executed between the deceased Pyarasaheb K. Rana and the plaintiff and in the Memorandum of Understanding the plaintiff has been described as a partnership firm. The suit was filed by the partnership firm. The defendants have pleaded bar under Section 69 of the Partnership Act. The Suit was filed in May 2014 and Deed of Rectification was executed on 14.05.2015 i.e. after filing of the Suit. Under such circumstances, it cannot be said that the amendment is an innocuous amendment, but it will be going to change the entire nature of the plaint and also it will be going to affect the defence taken by the respondents/defendants. The reasoning given

by the learned trial Judge in the order dated 09.11.2016 cannot be faulted with. Hence, Writ Petition is dismissed.

6. In view of the above, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)