

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 644 OF 2013

Uday Prakash Mokal ... Petitioner
Vs.
Ramchandra Janardhan Koli & Ors. ... Respondents

Ms. Aparna Shinde a/w. Tejashree Panchal, Advocate for the petitioner.

Mr. Pankaj J. Das, Advocate for respondent no. 2.

Ms. K.R. Kulkarni, AGP for respondent no. 3.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 4th August, 2017.

P.C.:

Rule. Rule made returnable forthwith. By consent, Writ Petition is heard finally and decided at the stage of admission.

2. None present for respondent no. 1 though served.

3. The learned counsel for the petitioner/plaintiff has submitted that the petitioner has filed this Writ Petition, as the petitioner's application for amendment of the plaint is rejected and by the order dated 26th April, 2013 passed by this Court, the entire suit proceedings is stayed. The learned counsel submitted that the

petitioner has filed the suit for specific performance against the respondents/defendants. The land is purchased under 12.5% scheme from the defendants/land owners. The learned counsel submitted that the petitioner/plaintiff has moved the Application for amendment of the plaint after obtaining more specifications of the suit property, which transpired after receiving the allotment letter on 15th March, 2012. She submitted that the suit was filed in 2007 and therefore, the application for amendment was made on 28th June, 2012. However, the said application should not have been rejected by the trial Court. She has submitted that till today even the Application under Exhibit 5 is not heard. The written statement is filed, however, the issues are not settled.

3. Perused the impugned order, plaint and the application made by the petitioner/plaintiff under Order 6 Rule 17 of the Code of Civil Procedure. The old Special Civil Suit No. 446 of 2007 given a new no. as Regular Civil Suit No. 123 of 2012 is pending before Civil Judge Junior Division, Panvel. After going through the Application Exhibit 5, it appears that the proposed amendment will not change the constitution of the suit. The petitioner/plaintiff has given the explanation for seeking amendment, which shows that the plaintiff

was diligent in taking out the application in time. The reasoning given by the learned Judge while rejecting this Application is erroneous. In order to avoid the multiplicity of the proceeding, the amendment should have been allowed. Hence, the order dated 17th October, 2012 is hereby set aside. The petitioner/plaintiff to amend the plaint accordingly within two weeks and the copy of the same is to be served on the respondents/defendants. The trial Judge to note that it is a 10 years old suit and therefore, the trial Court is requested to proceed with the suit and expedite the same. Parties to cooperate.

4. Rule is made absolute in terms of prayer clause (b).

(MRIDULA BHATKAR, J.)