

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders

WRIT PETITION NO.6059 OF 2014

ARYAN SHIVKUMAR TENKALE AND OTHERS
VERSUS
DATTA KASHINATH MUNDKAR DIED THROUGH
LRS. KASHINATH BHIMRAO MUNDKAR AND
OTHERS

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Advocate for Petitioners : Mr.Warad Sunil V.
AGP for Respondents/State: Mr.Adgaonkar R. P.
And Patel F. K. for R.Nos.1a to 1c, Mr.Biradar R.D.
for R.No.2.

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CORAM : V.L. ACHLIYA, J.

Dated: APRIL 04, 2018

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By this petition filed under Article 227 of the Constitution of India, the petitioners - original defendant Nos.2 to 4 have challenged the order dated 3.12.2013 passed below *Exh.68* in Special Civil Suit No.200/2010 by Joint C.J.S.D., Latur. By the impugned order, the trial Court has allowed the application seeking amendment filed by respondent Nos.1-A to 1-C - L.Rs. of original plaintiff.

2. The learned Counsel for petitioners assailed

the impugned order with contention that the trial Court has overlooked the proviso to Order VI Rule 17 of the Code of Civil Procedure while allowing the application. It is contended that the plaintiff has filed suit seeking relief of specific performance with consequential relief of vacant possession of the suit property. Petitioners have purchased the suit property vide sale deed dated 21st August, 2010 executed in their favour by defendant No.1. Prior to execution of sale deed, there was an agreement of sale entered in between petitioners and defendant No.1 on on 3.5.2010. The plaintiffs claim to have entered into agreement of sale on 1.6.2010.

3. It is contention of the petitioners that the agreement of sale in their favour was entered prior to the agreement of sale between the plaintiffs and defendant No.1. So also plaintiffs have filed suit after the execution of sale deed in favour of the petitioners by defendant No.1. It is contended that as the owner of suit property, the petitioners have started construction over the suit property in the year, 2011. Immediately thereafter, the plaintiffs have moved the application seeking prohibitory order to restrain the petitioners from raising construction over the suit plot. Initially, order of status quo was passed but not extended. The application is still shown as pending. In the

background of the facts stated in the application seeking prohibitory injunction learned Counsel for the petitioners submits that the construction carried out by the petitioners was very much within the knowledge of the plaintiffs. The issues were framed on 21.11.2012. The application seeking amendment has been filed by the plaintiffs on 26.8.2013 i.e. after listing the case for hearing. No explanation has been put forth by plaintiffs as to delay in making such application. It is contended that in absence of due diligence being shown on the part of the plaintiffs, the trial Court ought not to have entertained the application after framing of issues i.e. commencement of trial by trial court.

4. In support of the submissions advanced that the stage of commencement of trial begins from the stage of framing of issues, the learned Counsel for the petitioners has referred and relied upon the decisions in the cases of **Vidyabai and Ors v. Padmalatha and Anr¹**, **Vera Lelisa Viegas Pereira v. Agnelo Caetano Colaco and ors.²** and **Ajendraprasadji N. Pande and Anr v. Swami Keshavprakeshdasji N. and Ors.³**

5. On the other hand, learned Counsel

1 AIR 2009 SC 1433;

2 2014(1)Mh.L.J.;

3 AIR 2007 SC 806;

representing respondent Nos.1A to 1C supported the order passed by the trial Court. It is contended that the order passed by the trial Court is reasoned and well within the scope of exercise of powers under Order VI Rule 17 of the Code of Civil Procedure. It is contended that the order passed by trial Court is legal, proper and there is absolutely no perversity in the order to interfere in exercise of writ jurisdiction under Article 227 of the Constitution of India. It is contended that the trial Court has elaborately considered all such contentions raised before this Court while dealing with the application filed by the respondents. Learned Counsel has referred and relied upon the decision of the Apex Court in the case of **Abdul Rehman & Anr. vs. Mohd.Ruldu & Ors.**⁴

6. On due consideration of submissions advanced in the light of the impugned order passed and the purport of Order VI Rule 17 of the Code of Civil Procedure, no case is made out to interfere with the impugned order in exercise of writ jurisdiction under Article 227 of the Constitution of India. In my view, the order passed is reasoned and there is absolutely no perversity in the order passed by the trial Court. The application seeking amendment to the plaint was made so as to incorporate the subsequent events i.e. construction

⁴ 2012(11) SCC 341;

made during the pendency of suit. In order to claim the proper and effective reliefs, the plaintiff has moved the application (Exh.69) seeking amendment to plaint to introduce subsequent events and consequential relief to remove the construction made over suit plot. The amendment as allowed neither changes the nature of the suit nor the reliefs claimed therein. The reliefs claimed by way of amendment is consequential to subsequent development. In absence of any jurisdictional error and perversity in the order, the order impugned calls for no interference in exercise of writ jurisdiction under Article 227 of the Constitution of India. Hence, petition dismissed.

(V.L. ACHLIYA,J)