

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12088 OF 2018

Pandit Sopanrao Sonwane

Petitioner

VERSUS

Suresh Govindrao Chidrewar & ors.

Respondents

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Mr. B.R. Kedar, Advocate for the petitioner

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 29th OCTOBER, 2018

PER COURT :

1 The petitioner-original defendant No.6 is aggrieved by the impugned order dated 21.08.2018, passed by the Trial Court by which it has allowed application Exh.68 filed in R.C.S. No.466/2014 by the plaintiff and has permitted him to amend the plaint. Costs of Rs.500/- are directed to be paid to each defendant Nos.1 to 3, 5, 6 and 9.

2 Learned counsel for the petitioner has strenuously criticized the impugned order and has put forth the following grounds :-

a) The petitioner had purchased the suit property, which is a plot meant for construction of a house in the gaathan area, on 24.10.2008. The

plaintiff has preferred R.C.S. No.466/2014 on 31.10.2014 claiming possession, cancellation of sale deed and perpetual injunction that this petitioner should not construct or erect any construction on the said plot.

b) The petitioner filed his written statement on 10.12.2014 and took a stand that he has already erected a construction of a house on the plot and is occupying the said house.

c) Issues were cast.

d) On 09.11.2017, which is after about 2 years and 11 months, the plaintiff filed application Exh.68 praying for leave to add a prayer of mandatory injunction so as to demolish the house if he succeeds in the suit.

3 The petitioner has placed reliance on the judgment of the Hon'ble Apex Court in the matter of **Ajendraprasadji N. Pande and Anr. Vs. Swami Keshavprakeshdasji N. and Ors., AIR 2007 SUPREME COURT 806** and an order of this Court dated 18.09.2018 in **Writ Petition No.10396 of 2018** in the matter of **Shaukat Ali and others Vs. Noor Khan and others.**

4 It is strenuously contended that as the plaintiff has failed to explain due diligence under the proviso to Rule 17 of Order VI, the

amendment ought not to be permitted and the limitation aspect also arises.

5 I find that the suit has been filed by the plaintiff for seeking cancellation of a sale deed on the basis of which this petitioner claims to have purchased the plot. The plaintiff further seeks possession of the plot and seeks perpetual injunction that this petitioner should not construct on the said plot. Even if the contentions of the petitioner are taken at their best, if the plaintiff succeeds and is given the possession of the said plot, he may either opt for demolishing the structure or may accept the plot along with the structure. He has already prayed for perpetual injunction. Having noticed that the petitioner has taken a stand that the structure has been erected, the plaintiff sought a consequential relief vide the amendment to demolish the structure if he succeeds in the suit. As such, it does not appear that a fresh cause of action has been initiated by the plaintiff.

6 In so far as due diligence is concerned, the Hon'ble Apex Court has laid down a law in **Chakreshwari Constructions Pvt. Ltd. Vs. Manohar Lal, 2017 (5) SCC 212** and **Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & ors., 2009(6) All M.R. 986 (S.C.)**. I,

therefore, find that it cannot be said that the plaintiff has committed an inordinate delay in seeking the relief of mandatory injunction as this petitioner has taken a stand that he has already erected a construction. This petitioner can very well oppose the amended portion of the plaint by filing an additional written statement and can take up a ground as may be advised.

7 In view of the above, this petition being devoid of merits, is therefore dismissed.

[RAVINDRA V. GHUGE, J.]

Donge/-