

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1038 OF 2017

Vishal Bhanudas Dhumal,]
Age : 30 Years, Occ. Agriculture & Trader,]
R/at Datta Nagar, Ambegaon (BK),]
Telco Colony, Jambhulwadi, Pune-400046.] Petitioner

Versus

1. Santosh Gulabrao Konde,]
Age : 32 Years, Occ. Agriculture & Trader]
2. Ganesh Gulabrao Konde,]
Age : 33 Years, Occ. Agriculture & Trader]
3. Rupali Ganesh Konde,]
Age : 33 Years, Occ. Household]
4. Gulabrao Rambhau Konde,]
Age : 66 Years, Occ. Agriculture & Service]
Respondent Nos.1 to 4 are residing at]
Telco Society, Datta Nagar, Ambegaon (BK),]
Pune - 400 046.]
5. Sanjay Dattatray Kakade,]
Age : 53 years, Occ. Agriculture & Trader,]
R/at 1205, Kakade Capital,]
Shivaji Nagar, Pune.] Respondents

Mr. Rahul S. Kadam for the Petitioner.

Mr. Amogh P. Khodge for Respondent No.5.

Mr. A.R. Metkari, A.G.P., for Respondent No.3-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 17TH JANUARY 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Kadam, learned counsel for the Petitioner, Mr. Khodge, learned counsel for Respondent No.5, and Mr. Metkari, learned A.G.P. for Respondent No.3.
2. By this Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 13th October 2016 passed below "Exhibit-77" in Regular Civil Suit No.872 of 2011 by the Joint Civil Judge, Senior Division, Pune.
3. The application at "Exhibit-77" was filed by the Petitioner. Petitioner is the Original Plaintiff. By this application, filed under Order 6 Rule 17 of the C.P.C., the Petitioner has sought amendment in the plaint, in order to add the prayer clause in respect of which, according to him, there were sufficient averments made in paragraph Nos.8 and 9 of the plaint and an issue to that effect was already framed. He has also sought to introduce certain details about the 'Agreement of Sale' pertaining to the said registered 'Sale Deed' dated 10th March 2011.
4. The said application came to be rejected on the ground that, it was filed at a belated stage, after the trial has commenced.

5. However, considering the fact that, in respect of the proposed amendment to add the prayer clause, there are already sufficient averments made in paragraph Nos.8 and 9 of the plaint and an issue to that effect is also framed as “Issue No.4” by the Trial Court on 5th October 2015 i.e. *‘whether the Plaintiff proves that the Sale Deed dated 10th March 2011 executed by Defendant Nos.1 to 4 in favour of Defendant No.5 is illegal and not binding upon them?’*, the proposed amendment is not going to change the nature of the Suit and hence, in the interest of substantive cause of justice, the Petitioner needs to be allowed to make proposed amendment.

6. Accordingly, the Writ Petition is allowed. The impugned order passed by the Trial Court is set aside. Petitioner to carry out necessary amendment in the plaint within a period of two weeks from the date of receipt of a copy of this order by the Trial Court.

7. Rule is made absolute in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]