

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

WRIT PETITION NO.2082 OF 2016

Raghunath Sahebrao Konde .. Petitioner

V/s.

Ramakant Dattatraya Deshpande ... Respondent

Mr.Shriram Kulkarni a/w Ms.Madhura Deshmukh for the petitioner

CORAM: K.K. TATED, J.

DATED : MAY 2, 2018

PC. :

1 Heard.

2 By this petition, under Article 227 of the Constitution of India, Petitioner plaintiff is challenging the order dated 19.11.2015 passed by 2nd Joint Civil Judge, Senior Division, Pune rejecting Petitioner's Application below Exhibit 53 in Regular Civil Suit No.193 of 2010 for amendment of plaint under Order 6 Rule 17 of the Code of Civil Procedure, 1908. Hence, the present Writ Petition.

3 In the present Writ Petition, Petitioner plaintiff initially filed Regular Civil Suit No.193 of 2010 for an order of injunction restraining Respondent original defendant from disturbing his possession in respect of suit property as described in paragraph 1 of the plaint. In that Suit, Respondent defendant filed written statement as well as

counter claim. Thereafter Petitioner plaintiff filed Application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 on 25.10.2012 for allowing him to carry out amendment and claimed specific performance of agreement dated 06.08.1996 on payment of court fees and also for joining Sou.Chinga alias Kunda Suresh Deshpande as defendant no.5.

4 Bare reading of the Application filed by the plaintiff for amendment under Order 6 Rule 17 of Code of Civil Procedure, 1908 dated 25.10.2012 shows that though the Suit was filed in 2010, amendment Application was filed on the basis of document executed in the year 1996. Not only, that plaintiff wanted to carry out amendment by converting suit for injunction in Suit for specific performance.

5 It is to be noted that even Apex Court in the matter of North Eastern *Railway Administration, Gorakhpur vs. Bhagwan Das (D) by Lrs., 2008(8) SCC 511* held that the principles governing the question of granting or disallowing the amendment under Order VI Rule 17 of the Code of Civil Procedure, 1908 are well settled. Order VI Rule 17 of the Code of Civil Procedure, 1908 postulates amendments of pleadings at any time of the proceedings. All amendments ought to be allowed which satisfy two conditions (a) of not working any injustice to the other side; and (b) of being necessary for the purpose of determining the real question of controversy between the parties. Amendment should be refused only where the other party cannot be placed in the same position as if the pleadings had been originally corrected, but the amendment would cause him an injury which could not be

compensated in costs. In the case in hand, the original Plaintiff – Petitioner filed simplicitor suit for injunction inspite of having entire knowledge about the earlier agreement dated 06.08.1996 and by way of amendment he wants to convert the same for specific performance of the said agreement dated 06.08.1996. On delay a reference can be made to the Apex Court judgment in the matter of ***Van Vibhag Karamchari Griha Nirman Sahakari Sanstha Maryadit v. Ramesh Chander (2010) 14 SCC 596.***

6 Hence, I do not find any reason to interfere with the well reasoned order.

7 Hence, Writ Petition stands rejected.

8 At this stage, the learned counsel for the petitioner submits that petitioner may be permitted to make appropriate application before the Trial Court for joining Sou.Chinga alias Kunda Suresh Deshpande as defendant no.5.

9 Considering the submission made by the learned counsel for the petitioner, liberty granted to the petitioner to make application in the Trial Court for joining Sou.Chinga alias Kunda Suresh Deshpande as party defendant no.5 in Suit within 8 weeks from today.

10 If such application is filed, Trial Court to decide the same on its own merits, after hearing both the sides.

(K.K. TATED, J.)