

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 1539 OF 2018

Narhari Maruti Yelwande ... Petitioner
Vs.
Narayan Kisan Gavade & Ors. ... Respondents

Mr. Uday B.Nighot, Advocate for the petitioner.
Mr. Ashwin V. Hawelkar, Advocate for the respondent no. 1.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **25th July, 2018.**

P.C.:

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

2. This Writ Petition is directed against the judgment and order dated 15th January, 2018 passed by the learned Civil Judge Senior Division, Pune below Exhibit 110 in Special Civil Suit No. 438 of 2014 thereby rejecting the Application for amendment of plaint under Order 6 Rule 17 of Code of Civil Procedure.

3. The petitioner/plaintiff has filed the suit for declaration in respect of Power of Attorney which he has executed in favour of respondent no. 1, who is the main contesting party. The

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petitioner/plaintiff has also prayed in the plaint that if at all any document is executed on the basis of Power of Attorney by respondent no.1/ defendant no. 1, then same may be declared as null and void.

3. The petitioner/plaintiff has filed the suit in April, 2011. Two months thereafter, respondent no. 1/defendant no. 1 has executed the sale deed by using Power of Attorney, which the petitioner/plaintiff wants to dispute by amending the plaint and therefore, the petitioner/plaintiff has taken out Application for amendment of plaint under Order 6 Rule 17 of Code of Civil Procedure. The said Application was rejected. Hence, this Writ Petition.

4. The learned counsel for the petitioner has submitted that though the petitioner/plaintiff had knowledge in respect of sale deed in the year 2011 itself, he could not take out proper proceeding because he himself was involved in a criminal case. However, the petitioner is challenging the acts and transactions of respondent no. 1/defendant no. 1 based on disputed Power of Attorney. The learned counsel submitted that the evidence of petitioner/plaintiff is not yet commenced and, therefore, this amendment of plaint is to be

allowed.

5. The learned counsel for respondent no. 1 has submitted that the petitioner/plaintiff had knowledge of this execution of sale deed dated 17th June, 2011 in the year 2011 itself. It is not correct that the petitioner had knowledge for first time when the respondent no. 1/defendant no. 1 filed reply on 17th April, 2017. The learned counsel submitted that on account of sale deed, the petitioner filed criminal case against respondent no. 1/defendant no. 1 in 2011. Hence, the order passed by the trial Court is to be upheld.

6. Perused the plaint, proposed amendments and the impugned order of the trial Court. It appears from the pleadings in the plaint and prayer clause that the petitioner/plaintiff had challenged the Power of Attorney and also the transactions based on the said Power of Attorney which have been done by the respondent no. 1/defendant no. 1. It appears that the fact of this transaction, i.e., sale deed dated 17th June, 2011 was known to the petitioner/plaintiff in the year 2011, however, the petitioner did not carry out the said amendment. As there is prayer and pleading in respect of this transaction, this being the material fact, which is to be allowed subject to payment of cost.

Hence, I pass following order:

- (a) Writ Petition is allowed;
- (b) The order dated 15th January, 2018 passed by the learned Civil Judge Senior Division, Pune below Exhibit 110 in Special Civil Suit No. 438 of 2014 is hereby set aside;
- (b) Amendment is accepted and Application for amendment is allowed. The amendment is to be carried out within two weeks subject to payment of cost of Rs.30,000/- to respondent no.1/defendant no. 1 on or before 15th August, 2018;
- (c) The matter is now fixed before the trial Court for evidence, however, on the basis of proposed amendment, defendant no.1 is allowed to file further written statement and the additional issues, if required, may be framed. The trial Court to proceed. Parties to cooperate.

(MRIDULA BHATKAR, J.)