

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

WRIT PETITION No.3586 OF 2018

Ramchandra Tukaram Bhogam & Ors. ... Petitioners

Vs.

Mahapati Sakharam Patil & Ors. ... Respondents

Mr.Surel S. Shah for the Petitioners

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 12, 2018**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. Learned Counsel for the petitioners submits that respondent No.1 Mahapati Sakharam Patil has expired and his legal heirs i.e., respondent Nos.2 to 4, are brought on record and are served privately as well as through court notice. However, none appears for the respondents, despite service.
3. Learned Counsel for the petitioner submits that the petitioners are the plaintiffs, who filed suit for specific performance based on agreement of sale dated 9.1.2004. Defendant No.1 is

the vendor. Subsequently, he entered into sale deed with defendant Nos.8 and 9 on 17.3.2009. The plaintiff's examination in chief and cross-examination is over. Defendant Nos.2 to 4, legal heirs of defendant No.1, the vendor, have filed written statement and in the written statement, it is contended that the agreement of sale between defendant No.1 and defendant Nos.8 & 9 has taken place on 12.12.2008. The same fact was reiterated in the written statement filed by defendant Nos.8 and 9. The evidence of the defendants is yet to begin. In between, the defendants produced two documents i.e., the document dated 12.12.2008, and a document dated 23.1.2009, which is the agreement of sale between defendant No.1 and defendant Nos.8 & 9 was not referred to either by defendant No.1 or defendant Nos.8 & 9. Those documents are produced below exhibit 80 and yet to be proved. At that stage, the plaintiff has taken out the application for amendment of the plaint being application below exhibit 83 in the Special Civil Suit No.460 of 2009 under Order 6 Rule 17 of the Civil Procedure Code, however it was rejected on 27.11.2017 by the trial Court and hence, this petition.

4. The learned Counsel for the petitioner has submitted that

these documents were not produced earlier by the defendants before the plaintiff started his evidence. Therefore, the plaintiff did not have any opportunity to put up his challenge to those documents. He, therefore, submits that the only option left to him is to amend the plaint and challenge these two documents. The learned Counsel has further submitted that though the agreement of sale dated 12.12.2008 was referred to in the written statement of the defendant No.1 and defendant Nos.8 and 9. There is no mention of document dated 23.1.2009 in their respective written statements. Further, though the sale deed dated 17.3.2009 is produced, which was executed between defendant No.1 and defendant Nos.8 and 9, in the said document, there is no reference to earlier agreement of sale of 12.12.2008 and 23.1.2009. The learned Counsel submits that thus, these two documents are fabricated documents and this evidence is seriously challenged by the plaintiff.

5. Considered the submissions; perused the application at exhibit 83 filed by the plaintiff and also considered the facts of the suit. Perused the impugned order. The order passed by the learned Judge, in my view, is well reasoned and no interference is

required. However, it is necessary to clarify that the application for proposed amendment and the contents mentioned therein, is in fact a cross-examination which can be put to the defendants by the plaintiff on these documents. Though the document is produced and relied on by the defendants and is a subject matter of challenge for the plaintiff, it is not necessary for the plaintiff to amend the plaint and mention challenge to those documents in the pleadings. Even without amendment of the plaint, it is always open for the plaintiff or a party to cross-examine the opposite party in respect of the disputed documents. The scope of cross-examination is very wide and subject to relevancy and such cross-examination is to be allowed as it helps the Judge to find out the truth. Hence, in the present case, it is made clear that the absence of pleadings in respect of challenge to these documents, will not come in the way of cross-examination of the defendants by the plaintiff in respect of those documents, subject to relevancy.

6. With this, the Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)