

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 5297 OF 2013
WITH
CIVIL APPLICATION No. 2126 OF 2017 IN W.P. No. 5297 OF 2013

Kundalik Ganpat Mokal ... Petitioner
Vs.
Ganesh Bhau Keni & Anr. ... Respondents

Mr. Shailendra J. Singh, Advocate for the petitioner.
Mr. Omkar Gupte, Advocate for respondent nos. 1 and 2.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 7th August, 2018.

P.C.:

This Writ Petition is directed against the order dated 6th March, 2013 passed by the learned Civil Judge Junior Division, Panvel below Exhibit 33 in Regular Civil Suit No. 309 of 2012. The petitioner/plaintiff has filed the suit for number of prayers, i.e., for specific performance based on the Agreement, declaration, possession, injunction and mandatory injunction.

2. The learned counsel for the petitioner submitted that the petitioner/plaintiff has filed the suit in May 2012 and he moved the Application for amendment of the plaint on 8th November, 2012. The learned counsel submitted that within the period from May to October, the respondents/defendants have constructed a skeleton of

the building and they changed the nature of the suit plot, hence he wanted to bring all these facts on record and also wants to seek further relief. The learned counsel submitted that in view of the amendments sought and considering the nature of the reliefs prayed in the plaint, there is no change in the nature of the suit and therefore, the trial Court ought to have allowed this amendment.

3. The learned counsel for the respondents, while opposing this Petition, has supported the interim order passed by the learned Civil Judge Junior Division and has submitted that the amendment which is sought by the plaintiff and the relief sought thereby cannot be granted by the Court because three-storeyed building is already constructed, Society is formed and third parties are occupying the flats in the said building and now the petitioner/plaintiff seeks mandatory injunction against these persons. The prayers are also vague.

4. Considered the submissions. Perused the plaint so also the application for amendment. The Application for amendment was made within five months from the date of filing of the suit. As per the submissions of learned counsel for the petitioner that the plaint is

required to be amended because of the subsequent events which took place after filing of the suit and, therefore, it appears that the petitioner/plaintiff was diligent in taking out such application within 5 months from the filing of the suit. The suit is for specific performance seeking declaration, mandatory injunction against the defendant. Similar reliefs are further prayed by way of amendments and as the construction has taken place. It is also a fact that during the pendency of the suit in these 5 months, no order of injunction was granted in favour of the plaintiff. However, at the stage of amendment, the Court has to take into account whether the Application is filed diligently and whether the proposed amendments are going to change the nature of the suit. If at all there is cause of action for the plaintiff to take out amendment, then in order to avoid the multiplicity of the proceedings, the amendment is to be allowed so that all the issues and disputes can be adjudicated in one and the same proceedings. In view of this, I allow the Application for amendment subject to payment of cost of Rs.5,000/- which is to be paid/deposited in the trial Court within three weeks. Amendment is to be carried out within three weeks from the date of order.

5. Writ Petition is allowed.

6. In view of disposal of Writ Petition, Civil Application does not survive and the same is accordingly disposed of.

(MRIDULA BHATKAR, J.)