

psv

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

WRIT PETITION NO.6425 OF 2013

Sau.Mangala Sitaram Topare & Anr.	..Petitioners
Vs.	
Shri.Madhusudan Vasant Pathare & Ors.	..Respondents

Mr.Sanskar Marathe for Petitioners.
Ms.Deepti Wadkar-Shirsat for Respondent Nos.1 and 2.

CORAM : G.S. KULKARNI, J.

DATE : 15th JANUARY, 2018

P.C.:

Challenge in this petition is to the order dated 18th June 2013 passed by the learned Civil Judge, Junior Division, Chiplun, whereby the application of the respondents/plaintiffs under Order 6 Rule 17 of the Civil Procedure Code, seeking amendment of the plaint to incorporate paragraph 7(a) stands allowed. By the proposed amendment the respondents/plaintiffs asserted that if the applicant/defendant No.2 is found to be the tenant of the suit premises, subsequent to defendant No.1, then there would be a relationship of landlord and tenant between the respondents/plaintiffs and the applicant/defendant No.2 and that it be held that such rights of the tenancy shall stand determined by the suit notice dated 30th August 2010, and that the respondents/plaintiffs

would have a right to seek possession of the suit property as against defendant No.2 on the ground of arrears of rent.

2. After considering the rival pleas, the application for amendment was allowed by the learned trial Judge however with costs of Rs.2100/- to be given to the defendant Nos.1 to 3 jointly.

3. The only contention as urged by Mr.Marathe, learned Counsel for the petitioners/defendant Nos.2 and 3, in assailing the impugned order is that such an amendment was not necessary in as much as the applicants/defendant Nos.2 and 3 were already parties to the suit as also the necessary issues in regard to their possession were framed by the Court. He, therefore, submits that the application ought not to have been granted by the impugned order.

4. I have perused the impugned order as also I have perused the amendment application and the say as filed on behalf of the applicants. I am not persuaded by the submissions as made by Mr.Marathe, that merely because the issues are already framed by the Court, the amendment is not necessary and the amendment application ought to have been rejected. It is quite clear that by bringing on record the said amendment, there would be no change in the nature of the suit as also no injustice would be caused to the defendant. It is also quite clear that in the proceeding of R.C.S. No.49 of 2010, which was instituted by

defendant No.1 against the defendant Nos.2 and 3, defendant No.1 has failed to prove that he was in possession of the suit property. Accordingly, the issue as to possession to be recovered from which of the defendants is very much the subject matter of the adjudication in the suit in question and thus, by virtue of their possession, applicants/defendant Nos.2 and 3 are impleaded as parties to the suit. Thus, for determination of the real question in controversy, it was appropriate for the learned trial Judge to allow the amendment application as filed on behalf of the respondent/plaintiff. There would certainly be no injustice which would be caused to the petitioners. The reliance on behalf of the petitioner on the decision of the Supreme Court in case of **J. Samuel and others vs. Gattu Mahesh and Others**¹ and more particularly paragraph 12, in my opinion, would not assist the petitioners. The proposition of law as held in the said paragraph is well settled. The facts in hand are in fact completely within the frame work of law, as laid down in paragraph 12 of the said decision.

5. In the circumstances, the petition lacks merit. It is, accordingly, rejected. No costs.

6. It cannot be overlooked that by an order dated 25th July 2013, this Court while issuing notice for final disposal of the petition had stayed the proceedings of Regular Civil Suit No.4 of 2011. The stay is

¹ 2012(4) Mh.L.J.

continued till date. It is already more than 4 years that on this small issue, the matter has remained pending in this Court and the proceedings of the suit have remained stayed. In the circumstances, the parties shall appear before the trial Court on 22nd January 2018. The trial Court shall endeavour to proceed with the hearing of the pending suit as expeditiously as possible.

[G.S. KULKARNI, J.]