

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10936 OF 2015

Mansur M. Shaikh	...Petitioner
V/s.	
Jagannath P. Londhe	...Respondent

Mr.Tejal Ingle with Mr.Wasim Samlewale for the Petitioner.

Mr.Nagesh Chavan with Mr.Paras Yadav for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 18TH SEPTEMBER, 2018.

P.C. :-

1. By this petition filed under under Article 227 of the Constitution of India, the petitioner has impugned the order dated 10th June, 2015 passed by the learned Trial Judge below Exhibit – 25 under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amending the plaint and to add additional prayer for recovery of possession.

2. Mr.Ingle, learned counsel appearing for the petitioner invited my attention to the prayers in the original plaint inter-alia praying for cancellation of the said agreement dated 9th May, 2011 and also upon the written statement filed by the defendant claiming to be in possession of the suit property.

3. It is submitted by the learned counsel that possession is

sought in respect of the same property which was the subject matter of the agreement in respect of which the petitioner had prayed for cancellation. To avoid multiplicity of proceedings, the petitioner had prayed for amendment so as to seek prayer for recovery of possession of the same property which is the subject matter of the said agreement which is already the subject matter of the original prayers in the plaint. In support of this submission, learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of **Ragu Thilak D. John vs. S. Rayappan & Ors. (2001) 2 SCC 472** and the judgment of this Court in case of **Bhimrao Laxman Kamble & Ors. vs. Annaso Dhondiram Manole & Anr. 2018(2) Mh.L.J. 276** and would submit that to avoid multiplicity of proceedings, the Court has ample power to allow the amendment even if the affidavit of evidence had already filed by the plaintiff.

4. Mr.Chavan, learned counsel appearing for the respondent on the other hand submits that the petitioner has already filed affidavit of evidence. He invited my attention to the application dated 27th January, 2014 and more particularly paragraphs 2, 3, 4 and 7(a) and would submit that in the prayer clause of the said application dated 27th January, 2014, the petitioner has not prayed for inclusion of prayer for recovery of possession and thus even if the learned Trial Court would have permitted the amendment in terms of the

amendment described in paragraphs 2 and 3, no purpose would be served.

5. A perusal of the plaint filed the petitioner indicates that the petitioner has prayed for cancellation of the suit agreement which was entered into between the petitioner and the respondent. In the written statement filed by the respondent, the respondent has admitted the possession of the property.

6. In catena of decisions of the Hon'ble Supreme Court as well as of this Court, it has been held that to avoid multiplicity of proceedings and if the plaintiff has shown due diligence in not filing the application for amendment earlier, the Court has ample power to permit the amendment. Order VI Rule 17 of the Code of Civil Procedure, 1908, judgment of the Hon'ble Supreme Court relied upon by Mr.Ingle, learned counsel for the petitioner in case of **Ragu Thilak D. John** (supra) and the judgment of this Court in case of **Bhimrao Laxman Kamble & Ors.** (supra) would assist the case of the petitioner. I am respectfully bound by the said judgments.

7. Insofar as the submission of the learned counsel for the respondent that in prayer clause (7-a) of the application dated 27th January, 2014, there is no prayer for impleadment of the plaintiff insofar as recovery of possession is concerned, in my view, an inadvertent error is crept in the said application dated 27th January, 2014. The

said prayer has to be read with other averments made in the application by the petitioner. The objection raised by the respondent is hyper technical and is accordingly rejected.

8. The cross-examination of the petitioner has not commenced. Since the petitioner could not file application for amendment despite exercising due diligence, I am inclined to quash and set aside the impugned order and to allow the application filed by the petitioner.

9. I therefore, pass the following order :-

- a). The impugned order passed by the learned trial Judge on 10th June, 2015 below Exhibit – 25 filed by the petitioner is allowed. The petitioner is also permitted to implead the prayer for possession set out in the prayer clause 4 of the application. The amendment to be carried out within four weeks from today. The amended copy of the plaint shall be served upon the defendant within one week from the date of carrying out amendment. The defendant shall be permitted to file additional written statement within 90 days from the date of service of the amended copy of the plaint and shall serve a copy thereof upon the plaintiff's advocate simultaneously.
- b). The writ petition is disposed of in aforesaid terms. There shall be no order as to costs.
- c). It is made clear that merely because the petitioner has

been permitted to carry out amendment, the respondent has not accepted the contents thereof. The merits of the amendment would be considered by the learned Trial Court on its own merit.

d). If any additional Court fees is required to be paid by the petitioner in view of the amendment permitted by this Court, the petitioner shall pay differential amount within four weeks from today.

Vasant
Anandrao
Idhol

Digitally signed by
Vasant Anandrao
Idhol
Date: 2018.09.25
15:22:03 +0530

(R.D. DHANUKA, J.)