

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 13589 OF 2017

Suryanarayan Ramlal Yadav ... Petitioner
Vs.
Radhibai Atmaram Chaudhari & Ors. ... Respondents

Mr. R.A. Thorat, Senior Advocate i/b. Aditi S. Naikar, Advocate for the petitioner.

Mr. Milind Jadhav alw. Mehernaaz Wadia, Pranav Naik, Hiral Shah i/b. Kachwala Misar & Co., Advocate for respondent nos. 2 to 7.

Mr. Asraf A. Shaikh, Advocate for respondent No. 23.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 7th August, 2018.

P.C.:

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

2. This Writ Petition is directed against the order dated 11th October, 2017 passed by the learned 5th Joint Civil Judge Senior Division, Thane below Exhibit 121 in Special Civil Suit No. 123 of 2009.

3. The Application was moved by the petitioner/plaintiff under Order VI Rule 17 r/w. section 151 of the Code of Civil Procedure, 1908 for amendment in the pleadings. The plaintiff has filed the suit for specific performance of the Agreement dated 25th January, 2007

which he had entered into with the original defendant No. 21. Defendant nos. 1 and 20 are the original owners and defendant nos. 22 and 23 are the subsequent purchasers after 2007. On 16th January, 2013 the issues are framed and thereafter this Application for amendment was moved on 17th December, 2016 which was opposed by the present respondents. The learned Judge after considering the plaint and also the earlier Application for amendment made by the plaintiff, has rejected the said Application.

4. The learned senior counsel for the petitioner has submitted that he is not pressing amendment clause No. 7D, (a-1),(a-2) in the Application for amendment. He wants to amend the plaint only as per clause No. 7A, 7B and 7C and it will not change the nature of the suit.

5. The learned counsel for the respondents has supported the order passed by the learned trial Court and has submitted that the amendment clause No. 7C is not to be allowed, as it is just a fiction and based on hearsay material. He further points out that this is the fifth Application for amendment of the plaint and the plaintiff has abused the provisions of amendment under Order 6 Rule 17 of Code of Civil Procedure.

6. Perused the plaint, Application Exhibit 121 for amendment. Amendment clause Nos. 7A and 7B pertains to the demand of more amount of damages and the reason given for that. This amendment can be allowed. In amendment No. 7C, the petitioner/plaintiff wants to lead evidence and for that he has laid foundation and the said amendment is also to be allowed. The learned trial Judge has mainly rejected the Application for amendment because the plaintiff has taken out many amendment applications earlier. However, it is to be taken into account that though the issues are framed in 2013 and preliminary issues was framed and decided in 2015 yet affidavit-in-chief is not filed by the petitioner/plaintiff. The trial has not yet commenced. In view of this, I allow the amendments as per clause nos. 7A, 7B and 7C subject to payment of cost of Rs. 20,000/- within two weeks to be deposited in the trial Court.

7. Rule is made absolute in above terms.

8. Writ Petition is allowed.

(MRIDULA BHATKAR, J.)