

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

WRIT PETITION NO.6442 OF 2018

Jarina Khan Kalim Khan

Age : 50 years, Occu : Household,

R/o. Muslim Colony, Near to Gani

Tea seller, Khadka Shiwar,

Bhusawal, Tal. Bhusawal,

Dist. Jalgaon

.. Petitioner

Versus

Sayed Sadik Ali Sayed Yusuf Ali

Age : 42 years, Occu : Nil,

R/o. Implipura Jham Mohhala,

Bhusawal, Tal. Bhusawal, Dist. Jalgaon

.. Respondent

...

Advocate for Petitioner : Shri P.B. Gamot

Advocate for Respondent : Shri R.R. Shaikh

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CORAM : P.R. BORA, J.

Dated: July 26, 2019

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsel appearing for the parties. The order passed by learned 2nd Jt. Civil Judge, Junior Division, Bhusawal on 05.03.2018 below the application at Exh.38 in Regular Civil Suit No.3 of 2016 is challenged in the present petition. The application at Exh.38 was filed by the present respondent, who is the original plaintiff, seeking amendment in the suit plaint. The said amendment has been allowed. Aggrieved by, the present petition is filed.

2. The amendment was sought to the effect that, during pendency of the suit, the plaintiff was dispossessed and all said contents were sought to be incorporated by way of the amendment. The prayer clause was also sought to be amended adding the prayer for restoring the possession to the plaintiff.

3. The learned counsel appearing for the petitioner submitted that, as per the averments in the application preferred by the plaintiff, he was allegedly dispossessed from the suit property on 13.01.2016. The learned counsel submitted that, the application for amendment has been filed on 27.01.2017 i.e. after the period of about one year. The learned counsel referred to the provisions under Section 6 of the Specific Relief Act, which deals with the suit by the person dispossessed of immovable property. Sub-clause 2 of Section 6 of the Specific Relief Act provides that, 'no suit under this Section shall be brought after the expiry of six months from the date of dispossession'. Having regard to the provision as aforesaid, it is the contention of the learned counsel that, the trial Court could not have permitted the plaintiff to incorporate the amendment and the relief prayed for which was admittedly barred by the provisions as aforesaid. The learned counsel, in the circumstances, prayed for setting aside the impugned order.

4. The learned counsel appearing for the respondent supported the impugned order. The learned counsel submitted that, the suit is filed for declaration that he is the tenant in the suit property and the relief of injunction has also been sought restraining the defendants i.e. present petitioner from disturbing the possession over the suit premises of the plaintiff. According to the learned counsel, in such a suit amendment was sought having regard to the subsequent development, which was rightly allowed by the Trial Court.

5. The submission so made by the learned counsel for the respondent cannot be accepted. It appears that, the learned Trial Court has failed in appreciating the provisions under Section 6 (2) of the Specific Relief Act. In the present matter, admittedly, the dispossession from the suit property during pendency of the proceedings is alleged on 13.01.2016 and the amendment application and the consequential prayers are sought to be incorporated after the period of one year. No such amendment could have been allowed by the Trial Court. The order passed by learned 2nd Jt. Civil Judge, Junior Division, Bhusawal on 05.03.2018 below the application at Exh.38 in Regular Civil Suit No.3 of 2016,

therefore, cannot be sustained and deserves to be set aside and it is, accordingly, set aside. The Writ Petition is allowed in the aforesaid terms with no order as to costs.

(PR. BORA, J.)

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