

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10755 OF 2016

Laxman Sopan Mamadage
& another

Petitioners

Versus

Ravi Bhaurao Shinde

Respondent

Mr. S.B. Madde, Advocate holding for Mr. Anand Chawre, Advocate
for petitioners.

Mr. R.K Ashtekar, Advocate for respondent.

CORAM : M.S. KARNIK, J.

DATE : 6th August, 2019.

PER COURT :

1. Heard learned counsel for the respective parties.
2. Petitioners are the original plaintiffs. Plaintiffs filed a suit restraining the defendant from interfering and obstructing in the possession of the plaintiffs over the suit property. Plaintiffs claim to be the owner and possessors of the suit property. The suit was filed on 03.09.2015. Defendant filed written statement on 11.02.2016. In the written statement, defendant took a contention that the plaintiffs have no *locus* to file the suit as the plaintiffs are no longer the owners of the property. It was the specific contention of the defendant that plaintiffs executed a sale-deed on 07.09.2015 in favour of Ramrao Rangnath Pande.
3. Plaintiffs filed an application below Exhibit 24 praying that

they may be allowed to submit additional pleadings as re-joinder to the contents of paragraph no. 13 of the written statement filed by defendant. Plaintiffs wanted to clarify that though the suit property is sold to one Ramrao Rangnath Pande, the said transaction was not an out and out sale but it was a security transaction for the hand loan amount they borrowed from said Ramrao Pande and sale-deed to that effect was executed on 28.03.2016.

4. Learned counsel for the petitioners submits that the trial Court has committed an error in rejecting the said application. It is submitted that plaintiffs only wanted to clarify paragraph no. 13 of the written statement and bring on record the details of reconveyance.

5. Learned counsel for the respondent, on the other hand, supported the order passed by the trial Court.

6. I have gone through the order passed by the trial Court. There is no dispute that it is only after the written statement challenging the *locus* of the plaintiffs to maintain the suit on the ground that plaintiffs are no longer owners of the suit property is filed, plaintiffs filed application Exhibit 24 contending that the sale in favour of Ramrao Rangnath Pande after filing of the suit was not an out and out sale but it was a security transaction for the loan amount borrowed by plaintiffs. It is stated that the property has been reconveyed in favour of the plaintiffs on 28.03.2016. It is only two days after filing of the suit that sale-deed came to be executed by the plaintiffs in favour of Ramrao Pande. The trial Court has

observed that this fact was not even brought to the notice of the trial Court. Even the reconveyance in favour of plaintiffs on 28.03.2016 is suppressed. In these circumstances, the trial Court has come to the conclusion that the application cannot be treated as re-joinder. In my opinion, no fault can be found with the view taken by the trial Court.

7. I do not see any reason to interfere with the impugned order. It would be open for the plaintiffs to file appropriate application under Order VI Rule 17 of the Code of Civil Procedure seeking amendment. Such an application, if made, the same shall be considered by the trial Court on its own merits and in accordance with law. With these observations, writ petition stands dismissed.

(M.S. KARNIK, J.)

dyb/