

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9465 OF 2019

Smt.Nurjaha Allaudin Patel	.. Petitioner
Vs.	
Shri Ajij Mohamad Mujawar	.. Respondent

Mr.Ranjeeth Patil, for the Petitioner.
Mr.Suryajeet P. Chavan, for the Respondent.

CORAM : M.S.KARNIK, J.

DATE : 28st AUGUST, 2019

P.C. :

. Heard learned Counsel for the petitioner and learned Counsel for the respondent.

2. The petitioner is the original defendant. The respondent – plaintiff filed the Suit for specific performance of an agreement dated 01/01/2013. It is the plaintiff's case that the defendant agreed to sell the suit property for consideration of Rs. 10 lacs of which Rs. 7 lacs was paid to the defendant.

3. The defendant filed written statement denying the agreement. After the issues are framed and at the time when the plaintiff was leading his evidence, the defendant filed application below Exhibit 33 under Order VI Rule 17 of Code of Civil Procedure, 1908 for amending the written statement. By virtue of proposed amendments to the written statement, the defendant wanted to bring on record the averments as regard document dated 30/09/2006 by which the suit property was mortgaged in favour of Saheb Khan Mohammad Khan Pathan for sum of Rs. 40,000/-. Later on, the mortgage was released. There is another document dated 05/01/2013 by which the defendant rented out the suit property in favour of Balaji Bilpe. It is the contention of the defendant that the plaintiff was the witness to both these documents. Learned Counsel for the defendant submitted that by virtue of this amendment to the written statement, his defence will not change at all. He only wanted to bring on record certain facts relating to the suit property and the transactions relating thereto which indicate that the plaintiff was signatory to the said transactions.

4. Learned Counsel for the respondent supported the impugned order.

5. According to him, the proposed amendment would prejudice the plaintiff's case. He submits that amendment is belated and application is filed only when the evidence of plaintiff was recorded. He moreover submits that on the basis of some xerox copies, amendment is sought which should not be permitted.

6. Heard learned Counsel for both the parties. Perused the order of the trial Court. In my opinion, order passed by the trial Court calls for interference. By the amendment, the defendant only wanted to bring on record the details regarding the agreements which were executed by the defendant with third person in respect of the suit property to which the plaintiff is a witness. This being the position, in my opinion, by allowing the said amendment, no prejudice whatever would be caused to the plaintiff's case. The defendant by filing written statement has denied the execution of agreement of sale on the basis of

which the Suit for specific performance is filed.

7. Having regard to the fact that the application for amendment is made at the stage when the plaintiff is leading his evidence, though the Petition deserves to be allowed, however, this is subject to cost of Rs.5,000/- payable by petitioner to the Chief Minister's Relief Fund. Cost to be paid within a period of 4 weeks from today. Necessary amendment to the written statement to be carried out within 3 weeks from today. Impugned order is set aside.

(M.S.KARNIK, J.)