

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14229 OF 2017

Vinayak Ganpat Dalvi .. Petitioner
Vs.
Shirishkumar Sitaram Gadgil and ors. .. Respondents

Mr.Sumit S.Kothari, for the Petitioner.

CORAM : M.S.KARNIK, J.

DATE : 27th SEPTEMBER 2019

P.C. :

Not on board. Taken on Board.

2. Heard learned Counsel for the petitioner. None appears on behalf of the respondents though they are duly served.

3. The petitioner is the original plaintiff. The plaintiff had filed the Suit for specific performance for agreement of sale. By filing application Exhibit 79, the petitioner made an

application for amendment in the plaint under Order VI Rule 17 of Code of Civil Procedure, 1908. By amendment, the plaintiff wanted to bring on record that during pendency of the Suit, defendant No.1 sold the suit property to defendant No.2 and thereafter defendant No.2 sold the suit property to other defendants affecting rights of the plaintiff. It is further pointed out that after filing of the Suit, defendant No.2 carried out illegal construction on the suit property.

4. In the suit, prayer was made for specific performance and possession. In view of the subsequent event a consequential relief is prayed for demolition of the construction and recovery of possession underneath such construction. The trial Court rejected the application on the ground that the plaintiff was having knowledge of such construction and did not make any attempt to amend the plaint and therefore application is barred by time. In my opinion, when the Suit was for specific performance and for possession, the subsequent event in the form of the construction carried out by defendant No.2 could be

allowed to be brought on record by amendment. According to me, application for amendment deserves to be allowed. As the plaintiff had filed the Suit for specific performance and for possession, and as during the pendency of the Suit, some illegal construction is carried out as is the contention of the plaintiff, then there is no difficulty allowing the application for amendment keeping the question of limitation open.

5. Keeping issue of limitation open, the application Exhibit 79 is allowed. None has appeared on behalf of respondents though they are duly served. Petition is allowed subject to costs of Rs.10,000/- . The cost to be paid to the Agricultural College, Dapoli by the petitioner within a period of 2 weeks from today. The impugned order is set aside. Amendment to be carried out within 4 weeks from today. Application Exhibit 79 is allowed.

(M.S.KARNIK, J.)