

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7044 OF 2018

M/s.Vinamra Builders & Developers and ors. .. Petitioners

Vs.

Mr.Giriraj Shankar Nayak .. Respondent

Mr.Raju D.Suryawanshi, for the Petitioners.

Mr.Bhaves V. Magam, for the Respondent.

CORAM : M.S.KARNIK, J.

DATE : 30th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioners.

2. The petitioners are the original defendants No. 1 to 4. Respondent is the original plaintiff. The plaintiff had filed the Suit for declaration that the suit agreement dated 19/06/2007 in respect of the suit flat and additional amenities executed by defendants No. 1 to 4 in favour of plaintiffs is binding on the defendants. It is further prayed that act on the

part of the defendants in terminating suit agreement unilaterally by their reply dated 18/01/2008 is illegal, unwarranted and further consequential reliefs are prayed. There was delay on the part of the defendants No. 1 to 4 in filing the written statement. Defendants No.1 to 4 applied for condonation of delay. By order passed below Exhibit 29, the trial Court refused to condone the delay in filing the written statement. Thereafter the evidence was led and 'No Cross' order came to be passed on 19/11/2012. During the pendency of the Suit there was subsequent development in as much as defendants No. 1 to 4 executed agreement of sale in respect of suit flat in favour of the defendant No. 5. Respondent No. 5 – original defendant No. 5 in whose favour the agreement of sale was executed by defendants No. 1 to 4 applied for impleadment as party defendant. The trial Court allowed the application for impleading defendant No. 5 as party defendant in view of Order 1 Rule 10 of CPC.

3. The plaintiff in these circumstances, applied for amendment of the plaint. By filing the application for

amendment what was essentially sought by plaintiff was the relief against defendant No. 5 that the agreement dated 19/06/2007 is binding on the defendant No.5 also. Further relief was sought that defendant No.5 be directed to hand over peaceful possession of the suit flat to the plaintiff. Learned Counsel for the petitioner would submit that the defendants No. 1 to 4 have a right to file additional written statement to the amended plaint. The trial Court was of the opinion that by filing additional written statement, defendants No. 1 to 4 are virtually trying to file written statement to the original plaint as it stood prior to the amendment.

4. In my opinion, order passed by the trial Court calls for no interference. By order passed below Exhibit 29, request made by the defendants No. 1 to 4 for setting aside 'NO WS' order is already rejected. The said order was not challenged by the petitioners. The trial Court had then even proceeded to record the evidence of the plaintiff and no cross order was passed as against defendants No. 1 to 4. After the Suit

proceeded substantially, application came to be made by defendant No.5 for impleadment on the ground that the defendants No. 1 to 4 created rights in favour of defendant No. 5. Pursuant to the impleadment order passed by the trial Court, the plaintiff by amending plaint prayed for relief that the agreement dated 19/06/2007 is binding and subsisting on all defendants. Taking advantage of this amendment, it is now sought to be contended by the defendants No. 1 to 4 that they have right to file written statement to the amended plaint. As against defendants No.1 to 4 there already was a prayer that the agreement dated 19/06/2007 executed between the plaintiff and defendants No.1 to 4 be declared as legal, subsisting and binding on the defendants. By the amended plaint, the plaintiff is seeking declaration that agreement dated 19/06/2007 is binding on defendant No. 5 as well. This amendment by no stretch of imagination can be construed in the manner which would defeat the order passed by the trial Court below Exhibit 29. The said amendment essentially seeks to bring on record that the agreement is valid, subsisting and binding on defendant

No.5 as well.

5. In this view of the matter, I do not see any reason to interfere with the impugned order. Petition is dismissed. Suit is of the year 2007. The trial Court is requested to hear and decide the Suit as expeditiously as possible and in any case within a period of one years from today.

(M.S.KARNIK, J.)

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