

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.4486 OF 2019

NBS Developers through its	]	
Director Nooruddin Bashir Ahmed Patel	]	
and another.	]	Petitioners
Vs.		
Fazal Kamruddin Parkar and another.	]	Respondents

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Mr. Ashish Gabhale i/b Jay & Co., learned Advocate for the Petitioners.
 Mr. Swaroop S. Tharwal, learned Advocate for Respondent No.2.

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CORAM : R.G. KETKAR, J.

DATE : 22ND APRIL, 2019.

P.C:

Not on board. At the request of Mr. Gabhale, taken up in the production board.

2. Heard Mr. Gabhale, learned Counsel for the petitioners and Mr. Tharwal, learned Counsel for respondent No.2 at length.

3. This Petition takes exception to the order dated 6th December, 2018 passed by the learned Judge, Senior Division, Khed below Exhibit 106 in Regular Civil Suit No.11 of 2011. By that order, the learned trial Judge rejected the application made by the plaintiffs under Order-VI, Rule-17 of the Code of Civil Procedure, 1908 (for short 'C.P.C') for amending the plaint.

4. Rule. Mr. Tharwal waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of

learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

5. Initially, petitioner No.1, hereinafter referred to as 'plaintiff' had instituted Regular Civil Suit No.11 of 2011 for recovery of possession of the suit premises on the ground of default as also unlawful subletting by defendant No.1/tenant in favour of defendant No.2. During pendency of the suit, petitioner No.2/plaintiff No.2 purchased the suit premises on 21st February, 2014 by registered sale deed. Plaintiff No.2 was subsequently impleaded in the suit. The plaintiffs filed application Exhibit 106 under Order-VI, Rule-17 of the C.P.C for introducing ground of reasonable and bona fide requirement. Plaintiff No.2 contended that he wants the suit premises for carrying on new business. The defendants resisted the application by filing reply at Exhibit 109. By the impugned order, the learned trial Judge rejected the application mainly on the ground that by granting the proposed amendment, nature of the suit changes. Mr. Gabhale submitted that the learned trial Judge committed serious error in recording a finding that nature of the suit changes. He submitted that nature of the suit does not change. It essentially remains suit for eviction. He, therefore, submitted that impugned order deserves to be set aside.

6. On the other hand, Mr. Tharwal supported the impugned order. He submitted that evidence of plaintiff No.1 was recorded on 5th March, 2018. Evidence of plaintiff No.2 was recorded on 4th July, 2018. While the suit was pending, application is taken out by plaintiff No.2 setting up his requirement. The learned trial Judge held that nature of the suit will be changed if the amendment is allowed. He, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. It is not in dispute that plaintiff No.2 had purchased the suit premises by registered sale deed from plaintiff No.1 on 21st February, 2014. It is also not in dispute that evidence of plaintiff No.1 was recorded on 5th March, 2018 and evidence of plaintiff No.2 appears to have been recorded on 4th July, 2018. The question is whether by the proposed amendment, nature of the suit changes.

8. In the case of **Abdul Rehman Vs. Mohd. Ruldu, (2012) 11 SCC 341**, the Apex Court has observed in paragraph 13 as under;

“13. Next, we have to see whether the proposed amendments would alter the claim/cause of action of the plaintiffs. In view of the same, we verified the averments in the unamended plaint. As rightly pointed out by Ms. Manmeet Arora, learned counsel for the appellants that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the unamended plaint. We are satisfied that the challenge to the voidness of those sale deeds was implicit in the factual matrix set out in the unamended plaint and, therefore, the relief of cancellation of sale deeds as sought by the amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit. In view of the same, the contrary view expressed by the trial court and the High Court cannot be sustained. **It is not in dispute that the relief sought by way of amendment by the appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Considering the date of the sale deeds and the date on which the application was filed for amendment on the plaint, we are satisfied that the reliefs claimed are not barred in law and no prejudice should (sic would) have been caused to Respondents 13 (Defendants 13 therein) if the amendments were allowed and would in fact avoid multiplicity of litigation.**

[emphasis supplied]

9. It is well settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change nature of the suit as noted earlier. Making clear and explicit what was already implicit in the plaint will not change the nature of the suit. All amendments which are necessary for the purpose of determining real questions in controversy between the parties should be allowed if it does not change basic nature of the suit. After perusing the proposed amendment, it cannot be said that the proposed amendment changes nature of the suit. It cannot be disputed that plaintiff No.2 can file a separate suit on the ground of reasonable and bona fide requirement. If the amendment is allowed, it would in fact avoid multiplicity of the litigation.

10. In view thereof, the impugned order is liable to be set aside and is accordingly set aside. Application Exhibit 106 is allowed. Amendment shall be carried out within one week from today. Amended plaint shall be served on the other side during this period. After service of the amended plaint, the defendants are at liberty to file additional written statement to the amended plaint within 4 weeks from today.

11. Rule is made absolute with no order as to costs.

[R.G. KETKAR, J.]