

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7478 OF 2015

Nanaso Mahadeo More ... Petitioner

 $V_S.$

Shrirang Nanaji Kamble & Anr. ... Respondents

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Mr. Dilip Bodake for the Petitioner.

Mr. Udaya S. Samudrala for the Respondents.

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CORAM : M. S. KARNIK, J.

DATE : 5th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The petitioner is the original plaintiff. The suit is filed by the plaintiff for specific performance on the basis of registered agreement of sale dated 31.5.2011. The defendants filed the written statement. The issues are yet to be framed.
3. The petitioner filed the application below Exhibit 22 for amendment of the plaint. By way of the proposed amendment it is contended by the plaintiff that the parties had also executed an unregistered agreement of sale dated 31.5.2011, that is on the same date as the registered agreement of sale was executed.

The said unregistered document was with the Collector, Satara for obtaining permission. After the document was received by the plaintiff, he filed the present application for amending the plaint. By the proposed amendment the plaintiff wanted to bring on record averments regarding the unregistered agreement of sale also. The issues are yet to be framed.

4. Learned counsel for respondents opposed the petition. He supported the order passed by the Trial Court and contended that by the proposed amendment the plaintiff wants to materially alter the pleadings. According to him, this would change the nature of the suit altogether as the plaintiff wants to claim specific performance also on the basis of unregistered agreement of sale. He therefore prayed for rejection of the petition.

5. The Trial Court rejected the application holding that frame of suit will be altered materially and the proposed amendment may change the nature of the suit. The issues are yet to be framed. In my opinion, the application for amendment deserves to be allowed as the nature of the suit will not change by the proposed amendment. The suit is for specific performance of

the contract. The averments as regards the unregistered agreement of sale executed between the parties on the same date as execution of registered agreement of sale are now sought to be brought on record. Considering the facts and circumstances on record while allowing this petition, it is necessary that the respondents-defendants are adequately compensated with cost. It is made clear that all objections on merits to the amended plaint including the issue of maintainability of the suit is kept open to be decided on its own merits and in accordance with law if raised.

6. The present petition is allowed subject to cost of Rs.10,000/-. The cost of Rs. 10,000/- be paid by the plaintiff to the defendants within a period of two weeks from today. The cost to be deposited in the Trial Court and defendants are permitted to withdraw the amount of cost.

7. Necessary amendments to be carried out within a period of four weeks from today.

8. The petition is allowed.

(M. S. KARNIK, J.)