

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6947 OF 2019

Rashid Sikandar Shaikh

.. Petitioner

Vs.

Keshav Sambhaji Mane and ors.

.. Respondents

Mr.Ashutosh M.Kulkarni a/w Mr.Akshay Kulkarni, for the
Petitioner.

None for the Respondents.

CORAM : M.S.KARNIK, J.

DATE :19th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioner.

2. The petitioner by this Petition challenges the orders dated 23/01/2019 passed below Exhibits 54 & 56. The petitioner is original defendant No.3. The Suit filed by respondent No.1 – original plaintiff is for specific performance. The orders challenged by the petitioner are passed below Exhibits 54 & 56 allowing the applications for amendment made

by the plaintiff under Order VI Rule 17 of CPC for amendment in the plaint.

3. The plaintiff filed the Suit for specific performance of the contract of agreement dated 12/01/2016. During the pendency of the Suit, the petitioner - original defendant No.3 filed application under Order I Rule 10 for impleading himself as party defendant No.3 as according to him, he is in possession of the suit premises. The said application was allowed by the trial Court and the petitioner has been impleaded as defendant No.3.

4. The petitioner – plaintiff filed application Exhibit 54 for amending the plaint. According to him some of the debts of defendants No.1 & 2 were paid by him and therefore the petitioner prayed for relief that sale deed be executed in favour of plaintiff after accepting balance consideration amount of Rs.2,68,000/-.

5. By application Exhibit 56, the plaintiff stated that the

plaintiff has been put in possession of the suit property by defendants No.1 & 2. The trial Court allowed the application being pretrial amendment.

6. Learned Counsel for petitioner would submit that having allowed his application under Order I Rule 10 for impleading himself as defendant No.3 in view of the averments made in the application itself that it is the petitioner - defendant No.3 who is in possession of the suit premises, the trial Court should not have then allowed the application for amendment made by the plaintiff stating that the defendants No.1 & 2 have put the plaintiff in possession of the suit property. According to him, this plea is taken to defeat the case of the defendant No.3.

7. I have gone through the orders passed by the trial Court. The trial Court has allowed the applications as now plaintiff wants to contend that defendants No.1 & 2 have put the plaintiff in possession. Defendant No.3 can always file additional written statement to the amendment as it is his case

that defendant No.3 is in possession of the suit property. With liberty to defendant No.3 to file additional written statement raising all permissible defences to the amended plaint, the impugned order passed by the trial Court calls for no interference. Petition is dismissed.

(M.S.KARNIK, J.)

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