

DDR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6855 OF 2019

Chandrakant Maruti Mare ..Petitioner

vs.

Vanita Ashok Mare & anr. ..Respondents

....

Shri S.B. Rohile for petitioner.

....

CORAM : M.S.KARNIK, J.

DATE : 27th SEPTEMBER, 2019

P.C. :

Heard learned counsel for the petitioner.

2. In compliance with this Court's order dated 9th September, 2019 the petitioner has served the respondents. None has appeared on behalf of the respondents though they are duly served.

3. The petitioner is the original plaintiff. The plaintiff filed Regular Civil Suit No. 6542 of 2012 for permanent injunction. The suit property was sold by the plaintiff and defendant No.2 along with their respective shares to defendant

No.1 – wife of petitioner's elder brother Ashok and defendant No.2 for consideration of Rs.2,00,000/-. It is the case that the said consideration amount was not paid to the plaintiff by defendant No.1 and ultimately she flatly denied to pay the same in the year 2012. The averments are made in the Plaint that the plaintiff was cheated into executing the sale deed. It was later realised that defendant No.1 is trying to sell the suit property and therefore suit is filed for injunction.

4. During the pendency of the proceedings, the application is filed by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure below Exhibit 40 for amendment of the Plaint. By way of proposed amendment the plaintiff prayed for declaration that the sale deed dated 11/8/2004 is not binding upon the plaintiff as the same is illegal, void, without consideration and hollow. The trial Court has rejected the application on the ground that the claim for declaration of the sale deed as not binding upon the plaintiff is barred by the law of limitation.

5. None has appeared on behalf of the respondents though they are duly served.

6. I have gone through the Plaint. On a reading of the Plaint, it is seen that the claim is set up as regards the sale deed executed on 11/8/2004 in favour of defendant No.1, who is wife of elder brother of the plaintiff but the consideration was not paid. There are further averments that the plaintiff was cheated into executing the sale deed. The suit is filed for injunction restraining the defendants from selling the suit property and creating any third party rights in the suit property. Further relief is prayed that the defendants be enjoined from selling of the suit property to the extent of plaintiff's share. It is thus seen that so far as sale deed dated 11/8/2004 is concerned there are already averments in the Plaint. By proposed amendment the plaintiff wanted to bring on record further averments that the sale deed which has been executed by cheating the plaintiff and that he was compelled to hand over the possession of the suit property to defendant No.1. A declaration is sought that the sale

deed dated 11/8/2004 is not binding on the plaintiff.

7. In my opinion, considering the averments made in the Plaintiff and the proposed amendments, it does not appear that the plaintiff is trying to set up an altogether new claim. In the Plaintiff, there are already averments regarding sale deed dated 11/8/2004 and that consideration was not paid to the plaintiff. An injunction is sought that the defendants be restrained from selling of or disposing of the suit property to the extent of the plaintiff's share in suit property by the proposed amendment. The plaintiff is now seeking a declaration that the sale deed dated 11/8/2004 is not binding on the share of the plaintiff. This being the position, in my opinion, the amendment could have been allowed keeping the question of limitation open. According to me, considering the proposed amendment, it does not appear that the plaintiff is making out a new claim altogether. Keeping the question of limitation open, the present Petition deserves to be allowed.

8. The Petition is allowed subject to payment of cost of Rs.5000/- payable to the defendants.

9. The impugned order is set aside. The application Exhibit 40 is allowed.

10. Amendments to be carried out within a period of 2 weeks from the date of the uploading of this order.

(M.S.KARNIK, J.)

**Diksha
Rane**

Digitally signed by
Diksha Rane
Date: 2019.09.28
14:49:10 +0530