

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

WRIT PETITION NO. 12654 OF 2017

Smt.Saiqulunnisa Gulam & Ors.	...Petitioners
vs	
Jawwad Hussein Goge Ansari	...Respondent

Mr.Prakash Hartalkar with Tejas P. Hartalkar for Petitioners.
Mr.Mayuresh S. Lagu for Respondent No.1.

CORAM : S.C.GUPTE, J.

DATE : 17 JULY 2019

P.C. :

Heard learned Counsel for the Petitioners and learned Counsel for the Respondents. Rule. Rule taken up for hearing forthwith by consent of parties.

2 This writ petition challenges an order passed by the Civil Judge, Senior Division, Bhiwandi in a special civil suit. The order is passed on an application for amendment filed by the original plaintiffs, who are Petitioners before this court. The application sought to amend the plaint by incorporating averments concerning the title of plaintiff no.6, which he claimed to have acquired from plaintiff nos.1 to 5. The application was rejected by the trial court purportedly on the ground that the registered sale deed between plaintiff nos.1 to 5, on the one hand, and plaintiff no.6, on the other, was not originally pleaded before the court though the agreement did exist prior to the filing of the suit. The trial court in the

impugned order held that by virtue of the sale deed, plaintiff nos.1 to 5 did not have locus standi to file the suit as they have lost their title on the date of execution of the sale deed. The trial court was of the view that the proposed amendment, if allowed, would change the nature of the suit completely and would affect the rights of the defendant accrued to him on the basis of the pleadings earlier filed.

3 The very basis on which the plaintiffs' original amendment for bringing on record plaintiff no.6 was made and allowed was that the title of the suit property has been transferred by plaintiff nos.1 to 5 in favour of plaintiff no.6. If that amendment was allowed, it is beyond comprehension that the basis of the amendment, which was not originally claimed as part of the amendment, should not be allowed to be pleaded. Such amendment is absolutely necessary to bring out the real controversy between the parties in the suit. It does not in any way change the nature of the suit. The nature of the suit was to declare an agreement between the Plaintiffs, on the one hand, and the Defendant, on the other, of sale of the property as null and void. It is perfectly legitimate for the subsequent purchaser of the property from the original plaintiffs, who has already come on record as a party plaintiff, to place the facts concerning his acquisition of title on record. In the premises, it cannot be said that the proposed amendment would either change the nature of the suit or affect the rights of the defendant which have accrued to him on the basis of the pleadings originally filed.

4 In the premises, Rule is made absolute and the petition is allowed by quashing and setting aside the impugned order dated 30 June

2017 and allowing the Plaintiffs' application, being Exhibit 40, in Special Civil Suit No.838/2011. The Plaintiffs are permitted to carry out the amendment in their plaint in terms of Exhibit 40 within two weeks from today.

(S.C. GUPTE, J.)