

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12886 OF 2015

Sou. Yashodabai Dattaram NakhavaPetitioner

V/s.

Shri. Shivaji Atmaram Thakur
and Ors.Respondents

* * * *

Mr. Sudhir Prabhu, Advocate for the petitioner.

None for the respondents.

CORAM : SANDEEP K. SHINDE, J.

Thursday, 6th June, 2019.

P.C. :

1. That vide order dated 29th June, 2013 passed in Regular Civil Suit No. 17 of 2011 learned Court permitted plaintiff to amend the plaint. Petitioner being, defendant no.1 aggrieved by the said order, has preferred this petition under Article 227 of the Constitution of India.

2. Respondents no.1 to 5 herein, are the plaintiffs in Regular Civil Suit No. 17 of 2011 which was instituted in February, 2011 in the Court of Civil Judge Junior Division, Uran, District- Raigad, seeking a declaration that, defendant no.1 (petitioner herein) has no right in the suit properties bearing Survey No.364/1A and Survey No.364/1B. Plaintiffs are also seeking a prohibitory injunction to restrain defendant no.1 from making construction on the suit property. It is the plaintiffs' case that, their grandfather, Atmaram Dadaji Thakur had purchased the suit property under the provisions of the Bombay Tenancy and Agricultural Lands Act, and the defendant no.1 in collusion with the Revenue Authorities, managed to record her name in the revenue records though she is not the heir of Atmaram Dadaji Thakur. It is the plaintiffs' case that, on the basis of the revenue entry, she is obstructing the plaintiffs' possession in the suit property and therefore the subject suit was instituted.

2. In the written statement filed by defendant no.1, she has disclosed that, on 6th October, 2010 she executed a

lease-deed of part of the suit property, in favour of Sushmita Shashank Chinch Malatpure (leasee), who has obtained the license for storing the LPG gas in the godown, which she proposed to construct on part of the suit land. It is disclosed by the defendant that, the lessee has constructed the godown and as such lessee is in possession thereof.

3. In view of the facts disclosed in the written statement, the plaintiff applied for amendment of the plaint under Order 6 Rule 17 of the Civil Procedure Code. In proposed amendment, he sought a declaration, that the lease deed dated 6th October, 2010 executed by defendant no.1 in favour of Sushmita Shashank Chinch Malatpure is not binding on him and also sought decree to remove the construction made on part of the suit land by her. Plaintiff also sought leave to implead Sushmita Shashank Chinch Malatpure as defendant no.6 in the subject suit.

4. Application was opposed by defendant no.1 on the ground that, this fact was well within the knowledge of the plaintiff when the suit was instituted, in as much as, plaintiff in the plaint relied on mutation entry no.6058

which records the fact that part of the suit property is in the occupation of Sushmita Shashank Chinch Malatpure and therefore for want of exercise of due diligence, the application cannot be granted.

5. The learned trial Judge, however permitted the plaintiff to amend the plaint vide order dated 29th June, 2013 against which this petition is preferred.

6. I have perused the plaint. I have not come across any reference to the mutation entry no.6058 in the plaint as contended by petitioner and therefore it cannot be said at this stage, that the fact of leasing out the suit property by defendant no.1 to Sushmita Shashank Chinch Malatpure was within the petitioner's knowledge. It appears for the first time, the plaintiff learnt about the lease deed executed by defendant no.1 in favour of Sushmita Shashank Chinch Malatpure. Be that as it may, this being the subsequent event, which is brought to the notice of the plaintiff for the first time by defendant no.1 in her written statement, in my view, amendment is necessary for the purpose of determining the real questions of controversy between the

parties and further plaintiff is not introducing a totally different, new and inconsistent case or challenges, the fundamental character of the suit.

6. In view of the facts of the case and for the reasons stated hereinabove, no interference is called for in the impugned order under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

(SANDEEP K. SHINDE, J)