

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

WRIT PETITION NO.699 OF 2016

Salim Mehaboob Mujawar : Petitioner.
Versus
Pandurang Krushna Dabhade and ors. : Respondents.

Mr. Surel S Shah for the Petitioner.
Mr. Abhijit M Adagule for the Respondent No.5.

CORAM: K.K. TATED, J
DATED : FEBRUARY 01, 2019

P.C. :

1 Heard the learned counsel for the parties.

2 By this Writ Petition under Article 227 of the Constitution of India the Petitioner/original Plaintiff is challenging the order dated 28/10/2015 passed by the learned 11th Joint Civil Judge Junior Division, Kolhapur below Exhibit 39 in Regular Civil Suit No.702 of 2014 rejecting his application under Order VI Rule 17 of the Code of Civil Procedure for carrying out amendments in the plaint.

3 The learned counsel Mr.Surel Shah appearing for the Petitioner submits that in the present proceedings on the basis of Development Agreement dated 01/07/2000 he has filed the Regular Civil Suit No.702 of 2014 before the Civil Judge Junior Division, Kolhapur for an order of perpetual

injunction restraining the Defendants/owners of land from disturbing the possession of the original Plaintiff of the suit property viz. Survey No.551 part thereof situated at Kasba Bawda, Taluka Karveer, District Kolhapur. He submits that during pendency of the said suit, the Plaintiff learnt that the Defendants created third party right, title and interest in respect of the suit property by a sale deed dated 23/05/2014. Hence the Plaintiff filed an application under Order VI Rule 17 of the Code of Civil Procedure on 20/08/2015 for carrying out amendments in the suit. He submits that by way of amendments the Plaintiff wanted to challenge the sale deed dated 23/05/2014 executed by the Defendants in favour of the third party and the consequential amendments.

4 The learned counsel for the Plaintiff submits that, the Trial Court erred in coming to the conclusion that the Plaintiff failed to make out any case for carrying out amendments in the pending suit. He submits that the Trial Court ought to have held that by way of amendments the nature of the suit is not going to be changed. He submits that the Plaintiff wanted to bring on record the subsequent facts in respect of suit land. Hence the impugned order dated 28/10/2015 passed by the Trial Court is required to be set aside.

5 On the other hand the learned counsel Mr. Abhijit Adagule appearing for the Respondent No.5/original Defendant No.5 vehemently

opposed the Writ Petition. He submits that in the present proceedings before creating third party right, title and interest in respect of the suit property, the Defendants issued a public notice dated 07/05/2014 in the news paper known as "Dainik Pudhari". He submits that in response to the said public notice, the Plaintiff raised objection by issuing notice to the Defendants. He submits that thereafter the Defendants executed sale deed dated 23/05/2014 in favour of the third party. He submits that during that period the Plaintiff also filed an application before the Revenue Authority for setting aside the mutation entries which were made in favour of the purchaser. Thereafter the Plaintiff filed the present suit on 22/07/2014 for perpetual injunction restraining the Defendants from disturbing his possession in respect of the suit property. The learned counsel for the Defendants submits that inspite of having knowledge about the creation of the third party rights, title and interest in respect of the suit property by the Defendants, the Plaintiff filed the suit for injunction only. He submits that apart from that the Plaintiff filed the application under Order VI Rule 17 of the Code of Civil Procedure⁴ on 20/08/2015. He submits that these facts were considered by the Trial Court in its impugned order and particularly in paragraph 13. He further submits that a bare perusal of the proposed amendments shows that the Plaintiff wanted to change the entire nature of the suit. Therefore, there is no question of allowing the present Writ Petition by setting aside the order dated 20/08/2015. He submits that there is no substance in the present Writ Petition and the same be dismissed with costs.

6 Heard both the sides at length.

7 It is pertinent to note that the Defendants issued a public notice in the news paper known as “Dainik Pudhari” on 07/05/2014 for sale of suit land. In response to the said public notice the Plaintiff replied to the same. Thereafter the Defendants executed the sale deed dated 23/05/2014. The Plaintiff filed an application before the Revenue Authority for deleting the mutation entries for suit land carried out on the basis of the sale deed dated 23/05/2014. Thereafter the Plaintiff filed Regular Civil Suit No.702 of 2014 on 22/07/2014 and that also only for perpetual injunction. It is to be noted that inspite of the knowledge of creation of third party right, title and interestg in respect of the suit property by the Defendants in favour of the third party, the Plaintiff filed the suit only for perpetual injunction. Apart from that after more than one year, the Plaintiff has filed the application under Order VI Rule 17 of the Code of Civil Procedure on 20/08/2015.

8 A bare reading of the application for amendments shows that the Plaintiff wanted to change the entire nature of the suit itself. He filed the suit for perpetual injunction and by way of amendments he wanted to seek declaration that the sale deed dated 23/05/2014 is not binding on the Plaintiff. These facts were considered by the Trial Court in the impugned order.

9 Hence I do not find any reason to interfere with the impugned
order.

10 The Writ Petition is rejected.

11 No order as to costs.

(K.K. TATED, J.)