

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2813/2018

(DEORAO NAGORAO NIKULE & ANOTHER VERSUS PRADEEP TULSHIRAMJI DEOTARE & ANOTHER)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri A.A. Bade, counsel for petitioners.
 Shri H.N. Bhondge, counsel for respondents.

CORAM : A.S. CHANDURKAR, J.

DATE : JUNE 17, 2019.

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard at length.

The challenge in the present writ petition is to the order passed by the trial Court below Exhibit 22 whereby the application for amendment as moved by the plaintiffs stands allowed.

The respondents have filed suit for eviction and possession in respect of 600 square feet land alongwith structure thereon. According to the plaintiffs, they had purchased the suit property by a registered sale-deed on 16.11.1988 and the defendants have no right to occupy the same. In the plaint, it has been pleaded that a notice was issued to the defendants on 29.11.2012 calling upon them to vacate the suit property. As the defendants refused to vacate the suit property despite receipt of the notice, they had become trespassers in wrongful occupation. In the prayer clause, it was stated that the damages be awarded at the rate of Rupees Five Thousand per month. During pendency of the suit, the defendants filed application below Exhibit 16 seeking framing of an additional issue with regard to valuation of the suit. The trial Court by order dated 09.08.2017 observed that the valuation in the plaint as regards the prayer for possession was correct. However,

the plaintiffs were directed to correct the valuation as regards the relief with regard to damages. Thereafter, application for amendment of the plaint was moved with a prayer that damages for three years at Rs.1,80,000/- be paid and Court fees paid thereon were indicated. The application was opposed on the ground that in the plaint there were no pleadings as to the period from when damages were sought. The trial Court allowed that application by passing the impugned order.

Shri A.A. Bade, learned counsel for the petitioners submitted that in absence of any basic pleadings in the plaint as to the date from when damages at the rate of Rupees Five Thousand per month were sought, there was no reason to allow the amendment application. Moreover, it is only after the enquiry for *mesne* profits that the aspect of wrongful occupation of the defendants would come into operation. At this stage, the trial Court was not justified in allowing the amendment especially when the initial pleadings were missing in the plaint.

Shri H.N. Bhondge, learned counsel for the respondents supported the impugned order. According to him, it was pleaded in the plaint that occupation of the defendants after issuance of notice was illegal and as trespassers. He therefore submitted that the amendment moved merely to indicate the valuation was rightly allowed by the trial Court.

On hearing the learned counsel for the parties, it can be seen that it is the case of the plaintiffs that on 29.11.2012, notice was issued to the defendants to vacate the suit premises. As they did not handover possession, the defendants were trespassers. In the prayer clause, it had been prayed that damages at the rate of Rupees Five Thousand per month be awarded. Though the learned counsel for the defendants is justified in contending that specific

pleadings with regard to the claim for damages has not been made, it is submitted on behalf of the plaintiffs that the occupation of the defendants after receiving notice dated 29.11.2012 is as trespassers. Whether the existing pleadings or the pleadings as amended are sufficient to warrant granting the prayer for damages is a matter to be considered by the trial Court at the conclusion of the trial. At this stage, the issues have been framed and the matter is to progress further. It is found that the trial Court was within its discretion in permitting amendment of the plaint. It is always permissible for the defendants to raise all possible defences to oppose the prayer for grant of damages. Even the contention that the notice in question was dated 29.11.2012 and the suit has been filed prior to three years on 31.01.2014 is a matter that can be urged before the trial Court in accordance with law. In that view of the matter, in absence of any jurisdictional error, I am not inclined to interfere at this stage.

By clarifying that it is open for the defendants to consequentially amend the written statement and raise all possible challenges, the writ petition stands dismissed with no order as to costs.

JUDGE