

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

WRIT PETITION NO. 6934/2017

(BHAGIRATHBAI MOTIRAM KHIRATKAR & OTHERS VERSUS VIDYADHAR DAJIBA ALONE &
 ANOTHER)

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

Court's or Judge's orders

Shri M.P. Khajanchi, counsel for petitioners.
 Shri Rohit Joshi, counsel for R-1.
 Shri M.I. Dhattrak, counsel for R-2.

CORAM : A.S. CHANDURKAR, J.

DATE : MARCH 18, 2019.

The petitioners who are the original defendants are aggrieved by the order passed by the trial Court below Exhibit 11 whereby the application filed by them for striking off irrelevant and scandalous pleadings in the plaint has been rejected.

The suit as filed is for a mandatory injunction for removal of alleged unauthorized construction that has been undertaken by the defendant nos.2 to 5. In the plaint there are pleadings that by virtue of use of the suit property for commercial purpose disturbance is being caused to the plaintiff. There are further pleadings to indicate the manner in which the construction erected by the defendant nos.2 to 5 is contrary to the relevant provisions and hence the plaintiff claims entitlement to the relief of mandatory injunction.

Shri M.P. Khajanchi, learned counsel for the petitioners by referring to the averments in paragraphs 1, 3 and 4 of the plaint submits that the pleadings with regard to use of the premises as a marriage hall were not required in view of the fact that there was no prayer for grant of any permanent injunction so as to restrain the defendants from using the premises as a marriage hall. He

further submits that the alleged breach committed by the predecessor of the defendants while erecting the construction are also irrelevant and were not required to be pleaded. Placing reliance on the decisions in *Sopan Sukhdeo Sable & Others Versus Assistant Charity Commissioner & Others* [(2004) 3 SCC 137], *Iqbal & Others Versus Hakimuddin & Others* [(2005) 13 SCC 754] and *Satish Gayacharan Trivedi Versus Dr.Gopal Ramnarayan Mundhada & Others* [2015 (5) Mh.L.J. 463] it is submitted that in view of provisions of Order VI Rule 16 of the Code of Civil Procedure, 1908, the trial Court ought to have struck off the said pleadings. The observation that the evidence on record should be considered for said purpose was not in accordance with the requirements of said provisions as the power to strike off pleadings could be exercised at any stage.

Shri Rohit Joshi, learned counsel for the respondent no.1/plaintiff has supported the impugned order. He denied that the pleadings referred to by the defendant nos.2 to 5 were irrelevant and scandalous. According to him the said pleadings relate to material particulars for seeking the final relief. He submitted that the basis on which the cause of action had accrued after which relief could be granted to the plaintiff had been rightly pleaded.

Shri M.I. Dhattrak, learned counsel for the respondent no.2 submitted to the orders of the Court.

On hearing the learned counsel for the parties and on perusing the pleadings in the plaint, it is found that the discretion exercised by the trial Court in refusing to strike off the said pleadings does not call for any interference. Though the observations in the impugned order that the aspect of challenge to the sale-deed could be considered after the evidence is over are

unwarranted, it is found that the pleadings in question form the basis for the prayers that are made in the suit. It is the case of the plaintiff that though the plots in question admeasure 3540 square feet, the construction has been erected by indicating the area as 3888 square feet. Similarly, the pleadings with regard to use of the premises as a marriage hall cannot be termed to be scandalous as urged. It is for the plaintiff to prove the said activity being undertaken therein as one of the circumstances for seeking relief. Insofar as the decisions relied upon by the learned counsel for the petitioners are considered, there cannot be any quarrel with the proposition laid down therein. However in the facts of the present case, the pleadings in question are not found liable to be struck off.

By observing that the trial Court shall decide the suit on its own merits in accordance with law without being influenced by the observations made in the impugned order or the present order, the writ petition stands dismissed with no order as to costs.

JUDGE

APTE