

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.384/2019

Dhiraj Madanlal Ganeshpuri (Jaiswal)

Vs.

Kewalram Sahadev Rotkar and others

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

Court's or Judge's orders

Shri N. B. Bargat, Advocate for petitioner.

Shri S. D. Khati, Advocate for respondents.

CORAM : A. S. CHANDURKAR, J.

DATE : NOVEMBER 15, 2019.

1. The petitioner is the defendant in the suit as filed by the respondents herein. It is the case of the original plaintiffs that on 10.10.2015 the defendant had agreed to sell immovable property for consideration of Rs.1,01,26,500/- and an earnest amount of Rs.20,50,000/- came to be paid. According to the plaintiffs the defendant did not attend the office of the Sub-Registrar and instead it was found that some other parties sought to claim right with regard to the property. Hence suit for declaration that the defendant had no right to sell the said property or create third party rights came to be filed on 16.11.2015. After the written statement was filed issues were framed by the trial Court. The plaintiffs sought to amend the plaint by pleading that after the suit was filed an amount of Rs.1,50,000/- was paid to the defendant. Relief of specific performance of the aforesaid agreement with pleadings in that regard were sought to be incorporated in the plaint. This application was opposed by the original defendant and by the impugned order the trial Court has allowed the application for amendment.

2. Shri N. B. Bargat, learned counsel for the petitioner – defendant submitted that the trial Court was not justified in allowing the amendment as prayed for. The agreement of sale had been denied. On 18.07.2017 notice to produce documents including the alleged agreement of sale was moved by the defendant. That agreement was not placed on record and the trial Court therefore treated the said application as filed. He therefore submitted that when the execution of the agreement was denied by the defendant and as its copy was not placed on record such amendment could not be allowed. He also submitted that nature of the suit would be changed if the amendment is allowed. As the trial had commenced after framing of issues, the amendment application was wrongly allowed by the trial Court.

3. Shri S. D. Khati, learned counsel for the respondents – plaintiffs on the other hand submitted that execution of the agreement has been pleaded in the plaint itself. After the suit was filed further payments were made to the defendant and since the defendant sought to create third party rights in the suit property, relief of specific performance was also sought. Merely because copy of the agreement was not placed on record, it could not be said that there was no such agreement executed. The effect of filing the application to produce certain documents on record and its non-compliance can be considered by the trial Court while adjudicating the suit. The trial had not commenced as recording of evidence was yet to begin. He therefore submitted that there was no reason to interfere with the impugned order.

4. I have heard the learned counsel and I have perused the

respective pleadings. It is seen that in the plaint it is the case of the plaintiffs that on 10.10.2015 an agreement was entered into by the defendant to sell the suit property to the plaintiffs. An amount of Rs.20,50,000/- was also paid. According to the plaintiffs after the suit was filed further payments were made by way of cheque to the defendant. Since the defendant was denying the agreement in question it was necessary to seek specific performance of that agreement. It is found that at this stage it is only the plaint which is sought to be amended by seeking relief of specific performance. The conduct of the plaintiffs of not producing copy of the agreement in question despite notice being given by the defendant is a matter to be considered by the trial Court while deciding the suit. If the plaintiffs fail to produce copy of that agreement, the trial Court is empowered to consider that aspect. Considering the pleadings in the plaint as filed the nature of suit would not undergo any change if the amendment is allowed. I therefore find that the trial Court has rightly exercised discretion while allowing an application for amendment below Exhibit 47. There is no reason to interfere with the impugned order. By directing the trial Court to decide the suit on its own merits without being influenced by the observations made in this order, the Writ Petition is dismissed. No costs. The proceedings in Regular Civil Suit No.1367 of 2015 are expedited.

JUDGE