

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

15 WRIT PETITION NO.2208 OF 2020

RAMBHAU PANDURANG SABDE
VERSUS
CHANDRAKANT SUNIL METE AND ANOTHER THOROUGH NATURAL
GUARDIAN SINDHUBAI SUNIL METE

...
Advocate for Petitioners : Mr. Manale Satish S.

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CORAM : ROHIT B. DEO, J.
Date: February 10, 2020

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PER COURT :-

1 The petitioner is the defendant in RCS No. 459/2012 brought for decree of cancellation of sale-deeds and re-conveyance of the lands.

2 The plaintiffs are minors and the suit is instituted on their behalf by their mother who claims to be the natural guardian.

3 The plaintiffs contend that the suit land is ancestral and bears gut No.62 admeasuring 2 H 54 R. The plaintiffs contend that the suit land is recorded in their name.

4 The plaintiffs further contend that their family was in dire need of Rs.1,50,000/-. The said amount was borrowed from the defendant and as security, the sale deeds dated 22.10.2008 and 22.10.2009 were executed in favour of the defendant with a specific condition that the land shall be re-conveyed after the plaintiffs repay the loan with interest.

5 The plaintiffs contend that although the plaintiffs requested the defendant to accept amount of Rs.2,50,000/- towards the loan and interest and re-convey the suit land, the defendant refused. These are the basic facts on the basis of which the suit is instituted.

6 The defendant filed his written statement on 9.8.2012. The defendant denied each and every averment in the plaint. The defendant contended that the land covered by the two sale-deeds was purchased from the plaintiffs at the prevailing market price of Rs.3,00,000/- and the sale deeds were executed by the plaintiffs with the consent of their parents.

7 The parties went on trial. The mother of the plaintiffs Smt. Sindhubai Mete was examined as PW-1. She was cross-examined. The plaintiffs then examined one Dnyanoba Kumbhar as PW-2, who was cross-examined on behalf of the defendant. It was at this stage that the defendant preferred an application under Order 6 Rule 17 for permission to amend the written statement.

8 The defendant was conscious of the implication of the commencement of the trial. However, the only reason given by the defendant for failure to bring the matter before the Court before the commencement of trial was that the averments were not incorporated in the written statement filed in the year 2012

due to inadvertence. No attempt was made by the defendants to demonstrate that despite the exercise of due diligence, the matter could not have been brought before the Court before commencement of the trial.

9 Adverting to the amendment sought, paragraph No.13 was sought to be incorporated in the written statement. The said paragraph 13 reads thus:-

" 13] *That, it is submitted that before execution of above sale deed plaintiffs through their mother have executed agreement of sale dtd. 4/10/08 in favour of son of deft by name Venkat in respect of land adm. 2H out of land gat No.62 of village Chata Tq. Latur on a stamp paper of Rs.100/- and thereby agreed to sale the land for Rs.6,85,000/-. The witnesses Sudhakar Saudagar Rodke and Dnyanoba Kishan Kumbhar have attested the said agreement and it was notarized before notary Adv Shri K.M. Dudhankar on 4/10/08. The consideration price was Rs.6,85,000/-. The defendant has filed on record the original agreement of sale and receipt of payment of earnest amount of Rs.3,00,000/-. The deft paid the remaining consideration amount to the plffs and got executed registered sale deed from plffs.*

Moreover the real transaction in between plaintiffs and deft in respect of land adm 2H was of Rs.6,85,000/- but as the expenses of sale deed were to be born by plaintiffs and to avoid stamp duty the plaintiffs have shown the consideration price of suit land adm 2H as Rs.2,00,000/- as per ready reckoner instead of real price of Rs.6,85,000/- .

Further it is submitted that, the plffs shave sold the suit land adm 2H to the deft as plffs were in need of money to purchase house at Latur. Even plff Sindhubai entered into an agreement with one Jyotiram Bhadarkote R/o Latur to purchase the house for Rs.3,81,000/- and plff Sindhubai also paid earnest

amount of Rs.51,000/- to said Jyotiram, Said agreement and receipt are the part of sale deed of deft day book no.1771/08 dtd 22/10/2008. It is submitted that, on very second day of sale deed of deft the plff has purchased the house at Latur on 23/10/08 from and out of consideration amount paid by deft to plffs.

Further on 14/01/09 the plaintiffs agreed to sale the suit land adm 42R to the deft by executing a agreement of sale in favour of deft on stamp paper of Rs.100/- for the consideration of Rs.1,41,000/- and deft paid an amount of Rs.21,000/- to the plaintiffs towards earnest amount on the same day. Further the deft paid an amount of Rs.55,000/- towards consideration amount, thus the deft has paid in all Rs.76,000/- to the plffs and such fact has been acknowledged by the plffs by executing a receipt dtd. 08/04/09 in favour of deft and before attesting witnesses. Further the deft has paid remaining consideration amount of Rs.65,000/- to the plffs and on 22/10/09 the plaintiffs have executed a registered sale deed in favour of deft. Thus the real transaction in between plaintiffs and deft in respect of land adm. 42R was of Rs.1,41,000/- but as the expenses of sale deed were to be born by plaintiffs and to avoid stamp duty the plaintiffs have shown the consideration price of suit land adm. 42R as Rs.1,00,000/- as per ready reckoner instead of real price of Rs.1,41,000/-. The defendant has filed on record the original receipt of payment of Rs.76,000/- dtd 08/04/09, out of total consideration amount of Rs.1,41,000/-."

10 In my considered view apart from the fact that in view of the proviso to the amended order 6 rule 17, the defendant was required to demonstrate due diligence which he miserably failed to do, even otherwise, the amendment will cause serious prejudice to the plaintiff. The defendant filed the original written statement asserting on oath that the market rate prevailing was

Rs.3 lakhs for the two portions of land and therefore, he purchased the suit land from the plaintiff at that price. A totally new version is sought to be introduced by amending the written statement. As against Rs 3 lakhs, the defendant now contends that the actual transaction was for Rs.6,85,000/-. The defendant desires to bring on record that prior to the two sale deeds executed by the plaintiff, their mother entered into an agreement of sale. A further version is introduced that in order to avoid payment of stamp duty, a lesser consideration is shown in the sale deed.

I am satisfied that the defendant cannot be permitted to introduce the averments which changes the entire version and that too touching important aspects of the matter, after 8 years after filing of the written statement and after the commencement of the trial particularly since there is no explanation for the delay in preferring the application under order 6 rule 17.

11 The petitioner is relying on the decision of the Honourable Apex Court in the matter of **Varun Pahawa versus Renu Chaudhary (2019 DGLS (SC) 352)**. The said Judgment does not take the case of the petitioner any further. The suit was fixed for recording evidence. However, the application under order 6 rule 17 was preferred even before the witness could lead evidence. Further, the amendment was restricted to change in

the description of the plaintiff. The plaintiff was described as Director of the Siddharth Garments Pvt Ltd while the plaintiff ought to have been described as Siddharth Garments Pvt Ltd through its Director. The Honourable Apex Court held that the mistake of the counsel in drafting the plaint cannot be stretched to the extent of causing substantial prejudice to the litigant.

The petitioner placed reliance on the decision of Honourable Apex Court in the matter of ***Usha Balasaheb Swami and others versus Kiran Appaso Swami and others (2017 DGLS (SC) 466***). In the said decision, the Honourable Supreme Court was not considering the proviso to the order 6 rule 17. Reliance on the decision by the learned single Judge in the matter of ***Ramesh Ramnarayan Chandak & another versus Chandabai w/o Late Chandrashekhar Sharma (Writ Petition 280/2017)*** is equally misplaced. Perusal of paragraph 21 of the said decision would reveal that in that case the trial was yet to commence.

12 The petition is dismissed.

(ROHIT BABAN DEO, J)