

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 140 OF 2019**

Viren Pravin Choksey	...Applicant
Versus	
Vaibhav Dahyabhai Patel & Ors.	...Respondents

Mr. Bhavesh Parmar a/w Ms. Sonal Dayama for the Applicant

Ms. Nutan S. Moily for the Respondents

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 27th FEBRUARY 2020

P.C. :

1 Heard learned counsel for the parties.

2 By this revision application, the applicant has impugned the order dated 19th January 2019 passed by the learned Ad-hoc Judge, City Civil Court, Greater Mumbai in Chamber Summons No. 488/2010 in Suit No. 6498/2003, by which the learned Judge was pleased to allow the Chamber Summons of the respondents/plaintiffs seeking amendment of the plaint, on payment of cost of Rs. 5,000/-.

3 Learned counsel for the applicant submits that the amendment sought by the respondents/plaintiffs changes the nature of the suit. He

submits that the suit initially was filed for declaring the Consent Terms dated 13th February 2001 between defendant interse as illegal and against the provisions of law and not binding on the respondents/plaintiffs and other reliefs. He submits that now by the proposed amendment, respondents/plaintiffs seek to change the nature of the suit, inasmuch as, they are now seeking specific performance of Agreement for Sale dated 17th May 1990, which is not permissible in law. He submits that the said application was also filed belatedly, after the commencement of the trial. He submits that in these circumstances, the Chamber Summons ought not to have been entertained by the trial Court.

4 Learned counsel for the respondents/plaintiffs opposed the revision application. She submits that no interference is warranted in the impugned order. She submits that in para 13 of the plaint, the respondents/plaintiffs had categorically averred that there is a valid and subsisting agreement for sale dated 17th May 1990 between the deceased-Leo Pereira and the respondents/plaintiffs, however, on account of civil suit pending which terminated in January 2001, the Sale Agreement could not be completed. Learned counsel relied on the observations made by this Court in the aforesaid suit i.e. the order dated 26th November 2009 and 8th December 2009. She submits that pursuant to the said observations made

by this Court in the aforesaid suit, the respondents/plaintiffs immediately filed the aforesaid Chamber Summons in March 2010 and sought amendment of the plaint. She submits that the amendment does not, in any way, change the nature of the suit. She submits that there are averments in the plaint with respect to a valid and subsisting agreement for sale dated 17th May 1990 between the deceased-Leo Pereira and the respondents/plaintiffs and as such by the proposed amendment, the respondents/plaintiffs seek to amend the plaint by seeking specific performance of the said agreement for sale.

5 Perused the papers including the impugned order as well as the earlier orders passed in the suit. It is not in dispute that the respondents/plaintiffs had filed the aforesaid suit seeking a declaration that the Consent Terms dated 13th February 2001 arrived between the defendant interse was bad, illegal and contrary to the provisions of the law and therefore, not binding on the respondents/plaintiffs. A declaration was also sought that none of the defendants had any right, title or interest in respect of the suit property along with the house in the suit property.

6 A perusal of the plaint shows that the respondents/plaintiffs had specifically averred with respect to a valid and subsisting agreement for

sale dated 17th May 1990 entered into between deceased-Leo Pereira and the plaintiff. It is stated that the Sale Agreement could not be completed as the deceased-Leo Pereira expired pending the suit.

7 Having regard to the observations made by this Court in its orders dated 26th November 2009 and 8th December 2009, the respondents/plaintiffs filed a Chamber Summons and sought amendment of the plaint. What is stated in the schedule for amendment are details with respect to the agreement for sale entered into between the deceased and the respondents/plaintiffs and consequential relief for specific performance of the agreement for sale dated 17th May 1990 executed between the respondents/plaintiffs and the deceased-Leo Pereira.

8 As noted above, there is already a reference of the said Agreement for Sale in the plaint and as such, the amendment will not change the nature of the suit and instead will avoid multiplicity of the proceedings. The said amendment is necessary to decide the real controversy between the parties. The impugned order dated 19th January 2019 has already been given effect to inasmuch as the petitioner has amended the plaint by paying necessary cost of Rs. 5,000/- as directed by the trial Court. Pursuant to the amendment, it is open for the petitioner to

file additional written statement to the amended plaint.

9 Considering the aforesaid, no infirmity can be found in the impugned order. Petition is dismissed accordingly.

10 Considering that the suit is of the year 2002, the hearing of the suit is expedited. All parties to cooperate in the conduct of the suit.

REVATI MOHITE DERE, J.