

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO.9832 OF 2019

Shalik Shantaram Mhatre & Ors.	..Petitioners
V/s.	
Anusaya Laxman Gaikwad & Ors.	..Respondents

Mr. Bhooshan Walimbe i/b. Pretting Walimbe, for the Petitioners.
None for the Respondents.

**CORAM : C.V. BHADANG, J.
DATE : 11th DECEMBER 2020**

P.C.

. The challenge in this petition is to the order dated 20/4/2019 (below Exh.46) passed by the learned Civil Judge, Senior Division at Kalyan, in Special Civil Suit No.26/2013. By the impugned order, the learned Trial Court, has rejected application (Exh.46) filed by the petitioners for amendment of plaint.

2. The aforesaid suit is filed by the petitioners against the respondents, for specific performance of an Agreement for Sale dated 23/3/1990. The prayer clause in the plaint reads thus -

a. The Hon'ble Court may be pleased to grant the decree of specific performance in favour of the

plaintiffs by directing the defendants to specifically perform all the obligations as per agreement for sale and power attorneys dated 17/12/1988.

b. The Hon'ble Court may pleased to grant conveyance in favour of the plaintiffs by directing the defendants their share in the suit properties.

c. The Hon'ble Court may be pleased to grant the order of perpetual injunction against the defendants, their agents, servants and persons claiming through them from creating third party interest and/or handing over the possession of the properties mentioned in the conveyance deed.

d. Pending the hearing and final disposal of the suit properties mentioned in the conveyance deed temporary injunction in terms of clause (c) above may be granted in favour of the plaintiffs.

e. Ad interim relief in terms of above prayer clause(d).

f. Defendants may be order to pay the cost of the suit to the plaintiffs.

3. At the stage, when the issues were settled and the suit was fixed for recording of evidence, the petitioner, filed an application (Exh.46) for amendment of plaint. As per schedule appended to the application, the petitioner sought following amendment.

SCHEDULE OF AMENDMENT

A/ AFTER PARA No.8 OF THE PLAINT THE FOLLOWING BE ALLOWED TO BE INCLUDED AS PARA No.8-A.

8-A The Plaintiffs state that the defendants after the document dated 17.12.88 executed agreement on 23.3.1990 containing the detailed conditions and consideration amount. The consideration agreed is at Rs.22,68,500/- for the sale of the said property. The Defendants No.1 to 4 are therefore entitled to the sum of Rs.3,78,085/- according to their share. Therefore, the plaintiffs are liable to pay the said amount to the Defendants No.1 to 4. The plaintiffs state that they have paid the sum of Rs.3,07,500/- by cash and cheques. The Plaintiffs further submit that the Plaintiffs have paid to Lodha and Abdul Vahid Sheikh Rs.4,26,670/- on behalf of the Defendants No.1 to 4 and settled the claim of Lodha and Abdul Vashid Sheikh of Arth Builder and Developers, to whom the Defendants have agreed to sell the suit property behind the back of the Plaintiffs. Thus, the Plaintiff have thus paid total amount of Rs.7,34,170/- to the Defendants No.1 to 4 as against their share in the suit property. Therefore, the Plaintiffs have paid all the amount of consideration to the Defendants No.1 to 4 towards price of the sale of the suit property. The said amount is more than the agreed consideration payable to the defendants No.1 to 4. The Plaintiffs have thus

performed their entire part of the contract and nothing remains to be performed. The Defendants are not ready and willing to perform their part of contract to execute conveyance for no reason.

B/ AFTER CLAUSE No.16 a/ THE FOLLOWING SENTENCES BE PERMITTED TO BE INSERTED :

and the agreement dated 23.3.1990 and the defendants be directed to hand over the possession of their undivided share in the suit property to the Plaintiffs as the rest of the co-sharers have already conveyed the said property and conveyed their respective undivided suit property and possession.

5/ The Plaintiff therefore pray that the honourable Court be pleased to allow the application and permit the Plaintiffs to carry out amendment in the interest of justice on such terms and conditions as this honourable Court may deem fit.

4. The application was opposed on behalf of the respondents.

5. The learned Trial Court by the impugned order has rejected the application, inter alia, on the ground that the petitioner has not satisfied the requirement of the proviso to Order VI Rule 17 of CPC.

6. I have heard the learned counsel for the petitioner. None appears for the respondent. With the assistance of the learned counsel for the petitioner, I have gone through the record.

7. It is submitted by the learned counsel for the petitioner that in so far as prayer clause is concerned, the petitioner is merely seeking inclusion of the date of the agreement of sale as 23/3/1990. It is submitted that except respondent Nos.1 to 4, other sharers have already executed the sale deed in favour of the petitioner. It is therefore submitted that in the plaint valuation was only shown as Rs.9,74,250/-. It is submitted that the addition of para 8a is only clarificatory in nature. It is submitted that the trial has not commenced and therefore the proviso to Order VI Rule 17 is not attracted.

8. During the course of the argument, the learned counsel has restricted the addition of para 8(a) as under-

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of Rs.3,78,085/- according to their share. Therefore, the plaintiffs are liable to pay the said amount to the Defendants No.1 to 4. The plaintiffs state that they have paid the sum of Rs.3,07,500/- by cash and cheques. Therefore, the Plaintiffs have paid all the amount of consideration to the Defendants No.1 to 4 towards price of the sale of the suit property. The said amount is more than the agreed consideration payable to the defendants No.1 to 4. The Plaintiffs have thus performed their entire part of the contract and nothing remains to be performed. The Defendants are not ready and willing to perform their part of contract to execute conveyance for no reason.

9. I have carefully gone through the plaint and the proposed amendment. In this case, the recording of evidence in the Suit has not started. In so far as the amendment of the prayer clause is concerned, it is mere addition of the date of the agreement of sale. Even so far as para 8(a) is concerned, the learned counsel for the petitioner as indicated above has restricted it to only a portion thereof, which in my considered view, can be allowed as it does not tend to introduce any new or contradictory case.

10. Considering the over all circumstances, I find that the amendment can be allowed subject to costs.

11. Hence, the following order.

ORDER

1. The petition is allowed. The impugned order is hereby set aside.

2. The application (Exh.46) is allowed to the extent of the amendment of the prayer clause para 8(b) and part of the para 8(a) (as reproduced in para 8 above), subject to the petitioner paying costs of Rs.10,000/- to the respondent Nos.1 to 4 within six weeks from today.

3. The petitioner shall be at liberty to deposit the costs before the Trial Court payable to the respondent Nos.1 to 4 within six weeks from today.

4. The payment of costs is a condition precedent to the carrying out of the amendment.

5. The petition is disposed of in the aforesaid terms.

C.V. BHADANG, J.

This order is corrected as per speaking to the minutes of the order dated 21/12/2020.