

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

*WRIT PETITION NO. 12099 OF 2017
WITH
CIVIL APPLICATION NO. 1910 OF 2018*

Hemendra Chunilal Shah & anr. ...Petitioners
vs.
Ramniwas H. Bansal and ors. ...Respondents

Mr. Bhushan Mahadik i/by S.S. Patwardhan for the Petitioners.
Ms. Manjiri S. Parasnis for Respondent No.3.

CORAM : REVATI MOHITE DERE, J.
DATE : 29th January, 2020

PC:

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.
3. By this petition, the petitioners have impugned the order dated 5.7.2017 passed by the learned Joint Civil Judge, Senior Division, Pune below Exhibit-95 in Special Civil Suit No.2164 of 2008, by which the petitioners (original plaintiffs) application for amendment of the plaint came to be rejected.
4. Learned counsel for the petitioners submitted that the petitioners

(original plaintiffs) have filed Civil Suit No.2164 of 2008 for a declaration that the power of attorney dated 14.2.2008 executed by the respondent No.1 (defendant No.1) in favour of respondent No.2 (defendant No.2) in respect of the suit property be declared as illegal, null and void and for cancellation of the same. In the said suit, there is also a prayer that the sale deed dated 17.6.2008 executed by the respondent No.1 in favour of the respondent No.2 in respect of the suit property be declared as illegal, null and void and the same be cancelled. Similarly, it is prayed that the sale deed dated 23.7.2008 executed by the respondent No.2 in his alleged capacity as power of attorney holder of respondent No.1 in favour of respondent No.3 (original defendant No.3) be declared as illegal, null and void and the petitioners (original plaintiffs) be granted a decree of permanent injunction by restraining the defendants from entering into any transaction, in respect of the suit property. The respondents appeared in the said suit and filed their written statement. During the pendency of the suit and before the issues were framed, the petitioners preferred an application (Exhibit 95) in the said suit and sought amendment of the plaint. In the application, it was mentioned that recently they have come across some documents which show that the suit property is in the name of the partnership firm and that it is owned by M/s. Nikhil Chem. The document showing registration of the firm dated 21.12.1974 was relied upon. The petitioners in their amendment application sought impleadment of M/s. Nikhil Chem, a partnership firm duly registered under the Indian Partnership Act, as defendant No.1A. Accordingly, consequential amendments were also sought which have been set out in Para

5 of the amendment application i.e. Exhibit 95. The said application Exhibit 95 was rejected by the Trial Court after observing in Para 12 that, in the plaint, nowhere in express terms it was stated that the alleged partnership firm, M/s. Nikhil Chem, is the owner of the suit property/ *premises*. In Para 14 of the impugned order, it is mentioned that the application seeking amendment has not been signed by plaintiff No.1 and that the said application suffers from delay and laches.

5. A perusal of the observations made by the learned Judge shows that the said observations made by the learned Judge in Para 12 of the impugned orders are incorrect, inasmuch as the amendment application has been filed by the plaintiff No.1 for himself and as the power of attorney holder of plaintiff No.2. Similarly, in the plaint in Para 2, it is specifically averred that the plaintiff and defendant No.1 Shri. Vinodchand Navinchand Zaveri and one Mr. Shaikh Salim Basfruddin had formed a partnership under the name and style of the said firm as “Ms. Nikhil Chem Poona” vide Partnership Deed dated 27.3.1974. In Para 5 of the plaint it is also mentioned that, vide the said partition deed the property bearing Survey No.3C/1/1 was partitioned by metes and bounds and the suit property described in Para 1 had come to the share of M/s. Nikhil Chem, including the plaintiff. It is therefore evident that M/s. Nikhil Chem has been mentioned in Paras 2 and 5 of the plaint, as stated aforesaid.

6. On 1.3.2018 notice was issued to the respondents. Pursuant

thereto the respondent Nos. 1 and 3 appeared through their counsel. Ms. Manjiri Parasnis. Respondent No.2 was served by paper Publication and the respondent Nos. 4 and 5 were deleted by an order of this court.

7. A perusal of the impugned order shows that the learned Judge has not considered the averments set out in the plaint in its proper perspective. As noted above, issues are yet to be framed. The petitioners in the application seeking amendment of the plaint have set out that they have come across some documents to show that the suit property was owned by M/s. Nikhil Chem. The amendment sought is a consequential amendment and does not give rise to any new cause of action. Infact, to avoid multiplicity of proceedings, the said amendment is necessary.

8. Accordingly, the impugned order dated 5.7.2017 passed by the learned Judge below Exhibit 95 in Special Civil Suit No.2164 of 2008 is quashed and set aside. The petitioners (original plaintiffs) to carry out the amendment in the plaint as set out in the application (Exhibit 95). Amendment to be carried out within a period of six weeks from today. After the amendment is carried out, the respondents are permitted to file additional written statement within six weeks thereafter.

9. Rule is made absolute in the aforesaid terms. Petition is accordingly disposed off.

10. In view of the above order, Civil Application No.1910 of 2019 filed for stay of the Special Civil Suit No.2164 of 2008 does not survive and as such is disposed of.

All parties to act on an authenticated copy of this order.

REVATI MOHITE DERE, J.