

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

Writ Petition No. 2599 of 2019
Manoj Malviya Vs. Shyama Malviya and others

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

Court's or Judge's orders

Mr. S.D. Khati, Advocate for the petitioner
Ms. Rakhi R. Ahuja, Advocate for the respondent No.2.

CORAM : MANISH PITALE, J.

DATED : FEBRUARY 18, 2020

By this writ petition, the petitioner (original plaintiff) has challenged order dated 28th February 2019, passed by the Court of 13th Jt. Civil Judge (Senior Division), Nagpur, whereby an application for amendment of plaint (Exh.48), filed by the petitioner stood rejected.

2. The petitioner filed a suit for declaration, permanent injunction and cancellation of sale deed before the Court below, claiming a declaration of ownership in respect of suit property and cancellation of sale deed executed in favour of the original defendant No.2. The prayer clauses in the plaint read as follows :

“a) Pass a decree of declaration that the plaintiffs is and are continues to be the owner of all that piece and parcel of a land viz. Tenement No. E-167, 200 EWS T/s Colony, Shanti Nagar, admeasuring about 59.99 Sq. Mtrs, (645.732 Sq. Feet) together with the construction

admeasuring about 27.40 Sq. Mtrs., Sheet No. 51, City Survey No.775, Corporation House No. 745/167, situated at Shantinagar, Tahsil and District – Nagpur.

b) Pass a decree of declaration in favour of plaintiff and against the defendants that the sale deed dated 27/09/2011 at its serial No. 4540/2011 with the Office of Sub Registrar, Nagpur -5 is vitiated by fraud played by defendant No.2 as the defendant No.1 have left with no right, authority, title and interest etc. to execute any such deed of sale on date as aforesaid by virtue of the Gift Deed dated 19/12/2009, executed and registered before the Sub-Registrar, Nagpur-2 and its Serial No. 5036/2009, consequently, said sale deed is not binding on the plaintiff and the same is null, void ab-initio and illegal and the defendant No.2 had or has not at any point of time, right, title or authority said sale deed is not binding on the plaintiff and the same are null, void ab-initio and illegal, in the eyes of law; & the same shall not be binding upon the plaintiff & same be treated as cancelled.

c) Pass a decree of declaration in favour of plaintiff and against the defendant No.2 that the defendant No.2 had or has got no right, title or authority to create any third party interest on the basis of the above alleged sale deed in favour of any person or persons or prospective purchaser/s.

d) Pass a decree of permanent injunction against the defendant and in favour of plaintiff thereby permanently restraining the defendant, its agents, servants, employees or any other person acting on its behalf from disturbing the possession of the plaintiff over the suit property and also from dealing, transferring, alienating or creating any third party interest in any manner whatsoever in respect of the above mentioned suit property;

e) award the cost of the suit in favour of

the plaintiff and it be saddled on the defendants.

f) and further grant such other relief or pass such other orders as may be deemed fit and proper in the facts and circumstances of the case and in the interest of justice.”

3. In the said pending suit, the petitioner moved an application on 30/01/2019, seeking to amend the plaint and sought addition of following words in prayer clause (a) of the plaint.

“in view of Cancellation of Gift Deed dated 11/11/2010 registered at Serial No.5561/2010.”

4. The said application was opposed on behalf of the contesting defendant No.2 (respondent No.2 herein), by stating that allowing such an amendment would cause prejudice to the said defendant and that the petitioner was attempting to misguide the Court.

5. By the impugned order, the Court below rejected the application for amendment holding that the amendment as sought was seeking amalgamation of different reliefs, which was not permissible.

6. The learned counsel appearing for the petitioner invited attention of this Court to paragraphs No. 6, 7 and 8 of the plaint to demonstrate that the pleadings pertaining to cancellation of the gift deed were specifically raised in the said paragraphs and that by the proposed amendment the words sought to be added in prayer clause (a) of the plaint, were relatable

to the said pleadings, which the Court below failed to appreciate. It was submitted that the contesting defendant No.2 would not suffer any prejudice if such an amendment is allowed because she could very well pursue her contention raised in the written statement that the manner of cancellation of the gift deed was not in accordance with law.

7. On the other hand, the learned counsel appearing for the contesting defendant No.2 (respondent No.2 herein) submitted that addition of the said words would cause prejudice to the said defendant. It is submitted that the petitioner is adopting tactics to somehow delay the proceedings in the Court below and, therefore, the Court below was justified in rejecting the application for amendment.

8. Having perused the pleadings of the original plaint, particularly paragraphs No.6, 7 and 8, it becomes evident that elaborate pleadings are already on record pertaining to the claim of the petitioner that gift deed in question stood cancelled on a particular date. In this context, addition of the proposed words by way of amendment does not appear to be prejudicial to the defendants. It is merely an assertion of the claim that the plaintiff continues to be owner of the suit property since the gift deed itself stood cancelled, which in turn was the basis of execution of sale deed in favour of the contesting respondent No.2.

The Court below has committed an error in holding that allowing the amendment would lead to amalgamation of different reliefs, which would be prejudicial to the defendant. Therefore, this Court does not find any substance in the contention raised on behalf of respondent No.2 that prejudice would be caused to the said respondent if the impugned order was interfered with.

9. At the same time, the apprehension expressed by the respondent No.2 that allowing the amendment would amount to further delay of the proceedings before the Court below, needs to be addressed. Therefore, in view of the above, this Court finds that accordingly the impugned order is unsustainable and the impugned order is quashed and set aside. The application for amendment moved on behalf of the petitioner (Exh.48) is allowed in terms of prayers made therein. Consequently, the petitioner shall amend the plaint before the Court below within a period of three weeks from today. Considering the specific apprehension expressed on behalf of respondent No.2, the Court below is directed to dispose of the suit as expeditiously as possible and in any case within a period of ten months from today.

JUDGE