

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

WRIT PETITION NO. 2154 OF 2020

Vipul Dilip Garje

..Petitioner

v/s.

Yogesh Sudhakar Kedar

..Respondent

Mr. P.G.Lad a/w. Sayli Apte for the Petitioner.

Ms. Pranita Hingmire for the Respondent.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : MARCH 17, 2021.**

P.C.

1. Heard finally with consent of the parties.
2. The Petitioner herein has challenged the order dated 13th November, 2019, whereby the learned Joint Civil Judge, Nashik, has dismissed the application for amendment of the counter claim.
3. The Petitioner and the Respondent had entered into an agreement for sale dated 25th November, 2016 in respect of sale of the property under Gat no.304 admeasuring 1 Hector 60 R in village Umrle Budruk, Taluka Dindori, District Nashik. The case of the Respondent-Plaintiff is that the Petitioner-Defendant had not paid the sale consideration. The Respondent-Plaintiff further

claimed that he was in possession of the suit property and that it was agreed that the possession would be handed over only after the full and final payment of the sale consideration. The Respondent-Plaintiff filed suit for cancellation of the sale agreement alleging breach of terms and contract.

4. The Petitioner-Defendant contested the suit on the ground that he had paid the full consideration and that he was put in possession of the suit property. The Defendant also raised a counter claim seeking to restrain the Respondent-Plaintiff from interfering with his possession.

5. The Petitioner-Defendant had filed an application for amendment of the counter claim alleging that he was dispossessed during the pendency of the suit. It is alleged that the Respondent-Plaintiff had produced certain documents before the Court and when the Petitioner visited the suit property, he learnt that the Respondent had taken forcible possession of the suit property. It is in view of the subsequent events that the petitioner had filed an application for amendment alleging forcible dispossession during

pendency of the suit.

6. The trial court has dismissed the application mainly on the ground that the name of the Petitioner-Defendant is not recorded in the 7 x 12 extract and that the Petitioner has not established that the Plaintiff-Respondent has taken forcible possession of the suit property. The ld. Judge has recorded a finding that the case set up by the Petitioner-Defendant is baseless. Suffice it to say that the Petitioner-Defendant is not required to prove the facts at this stage. The questions whether he has been forcibly dispossessed during the pendency of the suit, or whether the Plaintiff was in possession of the suit property right from the inception is to be decided on merits. The ld. Judge was therefore not justified in commenting on the merits of the case.

7. The ground on which the application is dismissed, cannot be sustained. Moreover, the trial has not yet commenced, and no prejudice will be caused to the Respondent-Plaintiff if the amendment is allowed. The impugned order cannot be sustained. Hence, the Petition is allowed. The impugned order is set aside. Consequently, the application at Exhibit 30 is allowed. The

Defendant is permitted to amend the counter claim. Amendment to be carried out within two weeks from the receipt of the writ.

. Writ Petition stands disposed of in above terms.

Prasanna
P.
Salgaonkar

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Prasanna P.
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(ANUJA PRABHUDESSAI, J.)