

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.965 OF 2020**

Abasaheb Namdeo Jagtap .. Petitioner

Vs.

Maruti Ramchandra Raut & Anr. .. Respondents

...

Mr. Jaydeep Deo for the petitioner.

Mr. Abhishek Pungliya for respondent No.1.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 09TH DECEMBER, 2021.

P.C:-

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. The petitioner is aggrieved by an order passed below Ex-28 by the Second Additional Judge, Small Causes Court and Joint Civil Judge, Senior Division, Pune on 27/11/2019 on the application taken out for amendment of the plaint in Special Civil Suit No.1276 of 2012. The impugned order rejected the

AJN

said amendments.

3. The brief facts as disclosed in the writ petition would reveal that the petitioner is the original plaintiff, who has instituted a suit for cancellation of the sale deed dated 09/11/2011 qua a piece of land admeasuring 16 Ares set out in paragraph 2 of the plaint, which according to him was sold to defendant No.1 along with defendant No.2 being also a co-owner of the suit property. The perusal of the plaint would reveal that the pleadings are to the effect that pursuant to the registration of the sale deed, the cheque for an amount of Rs.5 lakhs, which was received by him when deposited, got dishonoured and the plaintiff then realized that the sale deed has been entered into by playing deception and, therefore, he prayed for cancellation of the sale deed. The suit came to be dismissed in the year 2015, but it was subsequently restored to its file in the year 2019 and to be precise on 27/04/2015, an application for amendment was taken out by invoking Order 6 Rule 17 of the CPC, where the plaintiff sought to rely upon an agreement to sell, wherein the consideration of the suit property was determined to be Rs.60 lakhs and the very same document is sought to be included in the pleading along with the pleading to the effect that the consideration in the sale deed was Rs.60 lakhs and a cheque of Rs.55 lakhs was also given to him along with the cheque of Rs.5 lakhs, which could not be honoured.

4. By the proposed amendment, he sought elucidation of the facts, which were not mentioned when the plaint was filed. The application was vehemently opposed on the ground that the plaintiff is seeking to insert new facts in the garb of bringing the particulars of the transaction and, in absence of due diligence, by placing the judgment of the Apex Court in **Vidyabai & Ors. v. Padmalatha & Anr.** reported in **2009 (4) Mh.L.J. 30** the amendment was sought to be rejected.

5. Learned Judge rejected the amendment by recording that the plaintiff has already filed his affidavit evidence on record in the year 2010 itself and by the proposed amendment his attempt is to change the nature of the transaction as for the first time, he is coming with a case that the agreed consideration was Rs.60 lakhs and this fact was well within his knowledge when the suit was filed and, therefore, due diligence was not adopted and the pleading cannot be assumed to be innocuous one and cannot be permitted to be inserted.

6. It is settled position of law that the pleadings can be allowed to be amended at any point of time, but restraint shall be observed in permitting the amendment of the pleadings once the trial has commenced. In present case, the trial is stucked on settlement of issues and though the suit is filed in 2012, it was dismissed in 2015, the evidence affidavit being filed by the plaintiff as early as in 2014. The amendment application is

moved in the year 2019 at the stage when the suit has not progressed at all and it was pending at the stage of affidavit evidence and the plaintiff has not entered in the box.

7. Perusal of the amendment would reveal that the plaintiff is ultimately seeking a relief of cancellation of the sale deed and the said document is already placed on record and the agreement to sale and the consideration thereof, which is sought to be brought on record, would only avoid multiplicity of proceedings and the fact being brought on record is necessary for determination of the real issue as to whether the sale deed executed in favour of defendant No.1 deserves its cancellation. The nature of suit and the cause of action being continued to remain the same as was pleaded in the original plaint, the insertion of the pleading is only in the nature of offering some clarifications about the very same transaction by making reference to an earlier transaction and about consideration of Rs.60 lakhs being agreed.

8. Interest of justice demands that the amendment be allowed and as the plaintiff has not yet been cross-examined and ultimately, the burden to make the pleadings good is upon the plaintiff by stepping into the witness box and proving the documents, on which he seeks to place reliance. Since the suit is of the year 2012 and by bringing the amendment, the defendants will be required to file additional written statement, I am inclined

AJN

to impose costs of Rs.25,000/- on the plaintiff, to be paid to respondent No.1. The costs shall be paid to respondent No.1 within four weeks from today and the receipt thereof shall be tendered before the trial Judge.

Further, since the suit is pending from the year 2012, learned trial Judge is also directed to expeditiously culminate the proceedings in the said suit within six months from today. Needless to state that both the parties shall render all their co-operation to the learned Judge.

9. The writ petition is disposed of in the aforestated terms.

[SMT. BHARATI DANGRE, J.]