

Madhukar Atmaram Bhoir & Anr .. Petitioners
Versus
Baddrudin Abbas Patel .. Respondent

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CORAM: BHARATI DANGRE, J.
DATED : 15th DECEMBER 2021

P.C:-

1 The petition is filed by the petitioner – plaintiff, who sought amendment of his plaint by invoking Order VI Rule 17 of the Code of Civil Procedure which came to be rejected by the Joint Civil Judge, Jr. Division, Vasai, on 30th October 2021.

The bare minimum facts which require mention, could be discerned, as a Regular Civil Suit No.479 of 2013 came to be instituted by four plaintiffs, seeking permanent injunction and a declaration to the following effect :-

(a) The Defendant his agents, representatives and assigns be restrained by an order and decree of permanent injunction from alienating the suit property in favour of any third person.

(b) The plaintiff states that the said agreement dated 20.04.1989 be declared null and void by the Hon'ble Court.

The Suit being filed in the year 2013, faced an amendment, filed on 25th October 2021, wherein the plaintiffs sought insertion of para no.4A, by way of alternate pleading, in case the Court comes to a conclusion that the signature of the plaintiff no.1 on the disputed document is assumed to be of the plaintiff no.1, then, what is sought to be pleaded is that the plaintiff no.1 not being the natural guardian of plaintiff nos.3 and 4, it will not bind them. Along with the insertion of para 4A, prayer 'aa' is also sought to be inserted which read thus :-

“aa It be hold and declared that the Deed of Conveyance executed by the plaintiff no.1 as alleged guardian of the plaintiff nos.03 and 04 is illegal and not binding on the plaintiff nos.03 & 04.”

2 The learned Judge has rejected the insertion as prayed above, though deletion of plaintiff no.2 is allowed.

3 On being confronted with the prayer clause 'aa', being amounting to changing the nature of the Suit, since now by the proposed amendment, a declaration is sought to the effect that the deed of conveyance executed by the plaintiff no.1 as alleged

guardian of plaintiff nos.3 and 4 be declared as illegal and not binding on them, could be seen in the wake of the subsequent development that the plaintiff nos.3 and 4 being already conveyed the property in their share in favour of a third party by a deed of conveyance registered on 4th November 2019. On noticing that this interest of the plaintiff nos.3 and 4, at a subsequent point of time, is the cause for insertion of prayer clause 'aa' and this goes alien to the relief sought in the original suit, being a declaration that the agreement dated 21st April 1989 be declared as null and void, which was a prayer made jointly by all the plaintiffs and the proposed prayer 'aa' will bring change in the nature of the Suit under the guise of amendment, and when I have expressed my disinclination to grant the same, the learned Senior counsel state that he has instructions to give up the said prayer by restricting to amend the pleadings by insertion of para 4A, which, in any case, are in the alternative.

4 In the wake of the above, without permitting the relief as sought by the proposed amendment in form of prayer clause 'aa', and since the issues are already settled, permitting the amendment to be allowed only by way of an alternative pleading, the impugned order to that limited extent is quashed and set aside.

5 The Application filed below Exhibit-44 is, therefore, granted, limited to the extent of insertion of para 4A in the plaint.

SMT. BHARATI DANGRE, J