

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

Writ Petition No. 965 of 2020

Narayanrao Andy Neduthody (Nair) Vs. Shri S. Ganesh & Another

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

Court's or Judge's orders

Mr. Harsh I. Kothari, Advocate for the petitioner
Mr. Masood Shareef, Advocate for the respondents

CORAM : MANISH PITALE, J.

DATED : JANUARY 08, 2021

By this Writ Petition, the petitioner has challenged order passed by the Small Causes Court for amendment of written statement and counter claim as also the order passed by the Court of District Judge, whereby, the revision application filed under the provisions of the Maharashtra Rent Control Act, 1999 read with provisions of the Small Causes Courts Act, was dismissed.

2. The petitioner had moved the application for amendment marked as Exh.176, before the Small Causes Court Court claiming that he was entitled to amend the written statement and to add a prayer in the counter claim in view of the recent judgment of the Hon'ble Supreme Court, whereby it is held that not only can a plea of adverse possession be used as a

shield, but, it can be used as a sword. On the basis of the said judgment, it was claimed that the petitioner was entitled for a declaration regarding title in the suit property, in view of the long standing adverse possession.

3. This application was opposed on behalf of the contesting respondents. The Small Causes Court considered the contentions of the rival parties and rejected the applications. The Court of District Judge dismissed the revision application filed by the petitioner challenging the said order of the Small Causes Court.

4. The learned counsel for the petitioner submitted that in view of the position of law clarified by the Hon'ble Supreme Court in the recent past, the petitioner was certainly entitled to have the amendment application allowed and that, therefore, the Courts below had clearly erred in passing the impugned orders. It was further submitted that a specific plea regarding adverse possession was already taken in the written statement and that since the substratum for moving an additional prayer by way of amendment was existing, no prejudice would be suffered by the respondents if the amendment stood allowed. It was further submitted that the petitioner would be left without any avenue to raise the plea of adverse possession in support of the proposed prayer

for grant of declaration. On this basis, it was submitted that the Writ Petition deserved to be allowed.

5. On the other hand, the learned counsel for the contesting respondents invited attention of this Court to the fact that the suit was filed as far back in the year 2010 and that it had reached the stage of pronouncement of judgment as far back in April, 2017, as the arguments were also over. It was brought to the notice of this Court that at this stage repeated applications were made on behalf of the petitioner, due to which the suit is still pending consideration and final disposal. The learned counsel for the respondents then invited attention of this Court to relevant portion of cross-examination of the petitioner herein where crucial admission were given, indicating that there was no substance at all in the plea of adverse possession sought to be pressed into service. It was submitted that in the cross-examination recorded as far back as on 17/10/2016, the petitioner himself had admitted that he was paying rent to the respondent No.2 (original plaintiff No.2) from the year 1985 till 2010 when the suit was filed. The attention of this Court was also invited to other portion of the evidence to support the contention that the petitioner had moved the application for amendment only as a delaying tactic and that, therefore, this Court exercising writ jurisdiction ought not to interfere with the impugned orders.

6. Heard learned counsel for the rival parties and perused the material on record. There is no dispute about the fact that the recent judgment of the Hon'ble Supreme Court does recognize the position of law that a plea of adverse possession can not only be used as a shield, but, it can be used as a sword. In other words, a declaration of ownership and title can now be sought by an individual, who is able to prove long standing adverse possession against the rival parties. It appears that the petitioner is seeking to take advantage of the said judgment in order to amend the written statement and counter claim, so as to add an additional prayer of declaration at the very fag end of the proceedings before the Small Causes Court.

7. The specific admissions given in the cross-examination of the petitioner have a crucial bearing in the present case. It is specifically stated at the outset in the cross-examination by the petitioner that he is a tenant in the suit property since the year 1984 and that, admittedly, from 1985 till 2010, i.e. when the suit was filed by the respondents, the petitioner had paid rent to the respondent No.2 (original plaintiff No.2). This admission completely puts paid to the proposed attempt on the part of the petitioner to take advantage of the said recent judgment of the Hon'ble Supreme Court. Moreover, such admissions given in the cross-examination also show that no error can be attributed

to the impugned orders passed by the Court below. It is interesting that the petitioner himself has relied on a tenancy agreement dated 12/05/2005 before the concerned authorities while seeking licence for selling of drugs. In the face of such material, this Court is of the opinion that there is substance in the contention raised on behalf of the respondents that the application for amendment filed at Exh.176, is nothing but one more desperate attempt on the part of the petitioner to somehow delay proceedings before the Small Causes Court.

8. In view of the above, this Court finds that there is no merit in the present writ petition. Accordingly, it is dismissed. Interim orders passed by this Court, if any, stand vacated.

9. The Small Causes Court is directed to dispose of the suit as expeditiously as possible and in any case within a period of four months from today.

10. Needless to say, the Small Causes Court shall proceed to decide the suit without being influenced by the observations made by this Court in the present order.

JUDGE