

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1743 OF 2016

Pandurang Irayya Diddi
Age : 54 years, Occu : Agri. and business,
R/o Vidhaya Nagar, Sangamner,
Tq. Sangamner, Dist. Ahemdagar .. Petitioner

Versus

Balu S/o Sampat Aher,
Age 44 years, Occ. Agri.,
R/o Nashik Pune Road,
Sangamner (Kh), Tq. Sangamner
Dist. Ahmednagar .. Respondent

...
Advocate for Petitioner : Mr. S.K. Shinde
Advocate for the respondent : Mr. V.H. Dighe
...

CORAM : MANGESH S. PATIL, J.

DATE : 11 JULY 2022

ORAL ORDER :

Heard. Rule. Rule made returnable forthwith. Learned advocate Mr. Dighe waives service for the respondent. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The petitioner is original plaintiff seeking specific performance of an agreement of sale dated 23-12-2010 purportedly executed by the respondent in respect of 20 Are portion of the eastern side from land survey no. 37/12 adjacent to the Nasik-Pune highway.

3. During pendency of the suit, by application (Exhibit - 26), the petitioner sought to amend the plaint. By the order under challenge, the application has been rejected.

4. Learned advocate for the petitioner submits that by practising fraud, the respondent has executed the agreement of sale of a portion of land survey no. 37 which according to him was not owned by him. The respondent having come with a specific case that the portion owned by him is to the north-east corner of the survey no. 37, in view of such stand, plaint was sought to be amended so as to put up some claims in alternative. The trial court has rejected the application by the order under challenge by going into the merits of the proposed amendment.

5. The learned advocate Mr. Dighe would submit that the respondent has been flatly disputing genuineness of the agreement of sale. Even application for amendment was preferred belatedly with false contentions. The written statement was filed way back. In spite of being aware about the stand being taken by the respondent, no urgent steps were taken to seek amendment of the plaint. The application was moved belatedly after the evidence had begun. No error is committed by the trial Court in rejecting the application.

6. Needless to state that the question as to the entitlement of a party to rely upon the proposed amendment to substantiate his original stand can seldom be gone into at the stage when the question

as to whether it is to be incorporated or not. Whether the petitioner would ultimately be entitled to put up a claim for specific performance in the alternative with a variation as contemplated under section 18 of the Specific Relief Act, 1963, is a matter which the trial Court will have to ponder upon and decide. At this juncture, it is sufficient to bear in mind that the petitioner has been seeking specific performance of an agreement to which the respondent has put up the variation. Whether the petitioner is entitled to such specific performance with variation, cannot be pre-judged. However, preventing the petitioner from putting up such a claim would certainly cause serious prejudice to him.

7. The proposed amendment claiming refund in case the specific performance was refused is sought to be pleaded by way of abundant precaution. It is thus quite apparent that by the proposed amendment the petitioner was not intending to set up a new case much less causing any serious prejudice to the respondent.

8. Admittedly, the trial is yet to get over. The respondent has yet not stepped into the witness box and he would have all the opportunity to defend the suit.

9. True it is that no sooner the respondent filed the written statement in September 2013, the petitioner could have promptly sought amendment of the plaint in view of the peculiar stand being taken by the former. The application for amendment was moved in November 2015 i.e. after about two years of filing the written

statement. However it is the petitioner's suit who was not to gain anything by putting forth application for amendment belatedly. It is trite that the matters are to be decided on merits rather than by default. When the petitioner was intending to add some reliefs in the alternative, the trial Court ought to have permitted him to do so, may be by imposing adequate costs.

10. The writ petition is allowed. The impugned order is quashed and set aside. The application for amendment (Exhibit - 26) stands allowed. Rule is made absolute in the above terms.

[MANGESH S. PATIL]
JUDGE

arp/