

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2234 OF 2020

Ramdas Damodhar Panchal
Age : 42 years, Occu : Agri,
R/o. Harangul (Kh), Tq. & Dist. Latur .. Petitioner

Versus

Baburao Jagannath Zunje
Age : 65 years, Occu : Agri,
R/o. Harangul (Kh), Tq. & Dist. Latur .. Respondent

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Advocate for Petitioner : Mr. P. P. More

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CORAM : SANDEEP V. MARNE, J.

DATE : 05-12-2022

ORAL JUDGMENT :

. Heard. Rule. Though respondent is served, he has failed to appear in the present petition. Rule is made returnable forthwith. With the consent of the learned counsel for petitioner, the petition is taken up for final hearing.

2. By this petition petitioner has challenged the order dated 25.06.2018 passed by the 2nd Jt. Civil Judge Senior Division, Latur below Exh.72 in Special Civil Suit No.83 of 2012 allowing defendant–respondent’s application for amendment of written-statement.

3. This was the third attempt made by defendant to raise

the issue of bar of jurisdiction. Plaintiff has filed the suit for specific performance of agreement to sale dated 02.05.2012. Defendant appeared in the suit and filed written-statement, in which he did not raise any contention with regard to bar of jurisdiction of the Civil Court on account of the plot being a part of Co-operative Housing Society. His defence in the written statement was that the property is joint family property and he had no authority to enter into agreement to sale. After four years of filing of the written-statement defendant, came with an idea that the suit does not fall within the jurisdiction of the Civil Court and that the same comes in the jurisdiction of the Cooperative Court and accordingly filed application on 23.03.2017 under Section 9-A of the Civil Procedure Code (hereinafter referred to as the 'CPC') for dismissal of the suit. The trial Court rejected the application by order dated 04.05.2017 by recording a specific finding that neither plaintiff is a member of the cooperative society nor the suit is filed against cooperative society and therefore the suit cannot fall within the jurisdiction of the Co-operative Court. Order dated 04.05.2017 has attained finality.

4. After rejection of the application filed under Section 9-A of the CPC, defendant came with another novel idea of filing additional modified written-statement and for that purpose filed

application dated 12.06.2017. The application was turned down by the trial Court by order dated 27.09.2017. He filed Writ Petition No.1067 of 2018 challenging the order dated 27.09.2017, but choose to withdraw the same with a liberty to take recourse to the permissible remedy under the CPC either to file additional written-statement or to move the application for amendment of written-statement.

5. In his third attempt, defendant filed application dated 26.02.2018 seeking amendment of written-statement. The said application was filed to bring on record the fact that the concerned plot is the part and parcel of the Cooperative Housing Society and therefore the Civil Court would lack jurisdiction. The trial Court has proceeded to allow the amendment application by order dated 25.06.2018.

6. Perusal of the order dated 25.06.2018 would indicate that the trial Court has not taken into consideration previous two failed attempts made by defendant to seek rejection of plaint under Section 9-A of the CPC and to file modified written-statement. It is apparent that the objective behind all the three attempts was to raise the issue of lack of jurisdiction. After having failed in first two

attempts, defendant filed application for amendment to incorporate the issue of bar of jurisdiction in the written-statement. This in my view is the total abuse of process of law. The trial Court ought to have noticed the earlier attempts made by defendant and ought to have rejected the application.

7. To make things worst, while rejecting his first application vide order dated 04.05.2017, the trial Court has recorded specific finding that since the suit is not filed against the Cooperative Society nor plaintiff has sought any relief against the Cooperative Society, the subject matter of the suit does not fall in the jurisdiction of the Cooperative Court. This finding recorded by the trial Court has attained finality. In such circumstances, even otherwise, defendant could not have been allowed to agitate the very same issue of jurisdiction by the trial Court.

8. Considering the above position, I am of the view that the amendment application (Exh.72) filed by defendant is gross abuse of the process of law. The application suffered from suppression of the previous attempts made by defendant. On account of repeated attempts made by defendants to agitate very same issue of lack of jurisdiction, the trial of the suit has been held up for a considerable

period of time.

9. In view of the above, I proceed to pass the following order.

ORDER

- (i) The writ petition is allowed.
- (ii) The order dated 25.06.2018 passed by the 2nd Jt. Civil Judge Senior Division, Latur below Exh.72 in Special Civil Suit No.83 of 2012 is set aside.
- (iii) Rule is made absolute.

(SANDEEP V. MARNE, J.)

GGP