

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 WRIT PETITION NO.3220 OF 2021

NIKHIL DADASAHEB KAKADE
VERSUS
SHAIKH NAJAMBAI IQBAL AND ANOTHER

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Advocate for Petitioner : Mr Yuvraj V.Kakde

Advocate for Respondent Nos. 1 and 2 : Mr Ajinkya Joshi h/f Mr S.V. Natsu

CORAM : SANDEEP V. MARNE, J.

DATE : 8th DECEMBER, 2022

PER COURT :

1. By this petition, petitioner challenges order dated 20.11.2019 passed by the Jt. Civil Judge, Junior Division, Shevgaon rejecting petitioner's/plaintiff's application for amendment of plaint.

2. Petitioner/plaintiff has filed a suit seeking injunction against the defendant from interfering petitioner's possession over the suit property. The trial in the suit commenced and progressed substantially. By the time, the application for amendment was filed on 24th July, 2019, plaintiff's three witnesses were examined and the examination of the defendants witnesses was completed. At that stage, application dated 24th July, 2019 was filed seeking to incorporate amendment in the plaint. The proposed amendment is in two parts. The first part of the amendment relates to the alleged incident dated 27.05.2019 when the defendant allegedly dispossessed the plaintiff. Second part is in respect of the challenge to the sale deed dated 24.09.2002. The trial Court has proceeded to reject the application for amendment.

3. Learned counsel for petitioner has submitted that the amendment is necessitated on account of occurrence of subsequent events during the pendency of the suit. He would submit that immediately after occurrence of the event dated 27.05.2019, the application for amendment was filed on 24.07.2019. He would also submit that the amendment with regard to the challenge to the sale deed dated 24.09.2002 are also necessary for the purpose of determining the real question of controversy between the parties.

4. Per contra, Mr Ajinkya Joshi holding for Mr Natu, learned counsel for respondents would strenuously oppose the petition. He would submit that on plain reading of the plaint, it is apparent that the plaintiff had already lost possession of the suit property at the time of filing of the suit. He would invite my attention to paragraph Nos. 4 and 5 of the plaint. He would submit that there is specific admission of the plaintiff to the effect that the possession of the suit property was lost by the plaintiff. He would therefore submit that there was no question of the possession being again lost on 27.05.2019. So far as the amendment relating to the challenge to the sale deed dated 24.09.2002 is concerned, he would submit that the same would completely alter nature of the suit as the suit filed is for injunction.

5. Having heard the learned counsel for the parties, it is true that the plaint does contain few averments with regard to the attempt made by the defendants to disturb the possession of the plaintiff over the suit

property. However, the plaintiff filed application for temporary injunction, which has been allowed and the defendant has been restrained from interfering with the possession of the plaintiff over the suit property. Such injunction could not have been clamped unless the trial court arrived at finding that the plaintiff was in possession of the suit property as on the date of grant of temporary injunction. Therefore, the submission of Mr Joshi about loss of possession by the plaintiff before filing of the suit cannot be accepted.

6. The first part of the amendment relating to the loss of possession of the property has taken place allegedly on 27.05.2019. Thus, by way of amendment, the events that have occurred during the pendency of the suit are sought to be brought on record and necessary relief based on that event are sought to be added.

7. True it is that the amendment was moved at the belated stage. However, considering the nature of amendment, the same could not have been sought earlier. The event in question has allegedly occurred on 27.05.2019 and the application for amendment was filed on 24.07.2019. The plaintiff was thus diligent in moving the application for amendment immediately after that event.

8. Coming to the second part of the amendment with regard to the challenge to the sale deed dated 24.09.2002 is concerned, the amendment in that regard deserves rejection. Firstly, the relief with regard to the present sale deed dated 24.09.2002 is clearly barred by limitation. Even otherwise, the relief with regard to the cancellation of sale deed

dated 24.09.2002 has absolutely no co-relation with the alternate prayer of the petitioner to protect his possession by praying for permanent injunction. Thus, in my view, the amendment with regard to challenge to the sale deed dated 24.09.2002 would completely alter the nature of the suit. Therefore, the second part amendment requires rejection. Accordingly, I proceed to pass the following order :-

ORDER

- (i) The order dated 20.11.2019 passed by the Jt. Civil Judge Junior Division, Shevgaon on application at Exh. 175 is set aside.
- (ii) Petitioner's/plaintiffs application at Exh. 175 for amendment of claim is partly allowed and petitioner is permitted to incorporate paragraph Nos. 6(a), 6(b), 6(c), 8(a) and 11(f) in the plaint.
- (iii) The rest of the proposed amendment is rejected.
- (iv) Plaintiff to pay costs of Rs.10,000/- (Rupees Ten Thousand Only) to the respondent within a period of four week from today. The costs to be deposited in the trial court with a liberty to the respondent to withdraw the same.
- (v) With the above directions, the writ petition is partly allowed.

[SANDEEP V. MARNE, J.]

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