

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

WRIT PETITION NO.6580 OF 2022

Ujjawala wd/o. Naresh Asopa
Age: 54 years, Occu.: Household,
R/o. Azad Chowk, Asopa Galli,
Latur, Tq. & Dist.Latur. ..Petitioner
(Ori. Respondent no.2)

VERSUS

1. Ms.Kaka Developers,
Through its Partner,
Narendra S/o. Devichandra Agarwal
Age: 59 years, Occu.: Agriculture and business,
R/o. Lokhand Galli, Latur, Tq. & Dist.Latur.
2. Rameshchandra Govindram @ Govindlal Asopa
Died through his L.Rs.
- 2.1 Anand s/o. Rajgopal Asopa
Age: 38 years, Occu.: Service,
R/o. Asopa Galli, Azad Chowk,
Latur, Tq. & Dist. Latur.
- 2.2 Suresh s/o. Madanlal Asopa
Age: 50 years, Occu.: Service,
R/o. Asopa Galli, Azad Chowk,
Latur, Tq. & Dist.Latur.
3. Amol s/o Chandrakant Zingade
Age: 41 years, Occu.: Agriculturist and Business
R/o. Ram Galli, Latur,
Tq. & Dist.Latur.
4. Ramakant s/o. Balwantrao Deshpande
Age: 55 years, Occu.: Agriculturist,
R/o. Manjari, Tq. & Dist.Latur. ..Respondents
(Ori. Appellant)

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Advocate for Petitioner : Mr.Hanmant V. Patil
Advocate for Respondent No.1 : Mr.P.R.Katneshwarkar h/f.
Mr. Ravibhushan P. Adgaonkar

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1. Anand S/o. Rajgopal Asopa
Age: 38 years, Occu.: Agriculturist.
2. Suresh S/o. Madanlal Asopa
Age: 55 years, Occu.: Agriculturist,
Both R/o Asopa Galli,
Agrsen Bhawan, Latur,
Tq. & Dist.Latur.

..Petitioners
(Org. Defendants)

VERSUS

1. M/s. Kaka Developers
Through its Partner
Narendra S/o. Devichand Agrawal
Age: 60 years, Occu.: Agriculturist & Business,
R/o. Lokhand Galli, Latur,
Tq. & Dist.Latur. (Org. Plaintiff)
2. Ujwala W/o. Naresh Asopa
Age: 55 years, Occu.: Homemaker,
R/o. Azad Chowk, Asopa Galli, Latur,
Tq. & Dist.Latur.
3. Amol S/o. Chandrkant Zingade
Age; 52 years, Occ.: Agriculturist & Business,
R/o. Ram Galli, Latur,
Tq. & Dist.Latur.
4. Ramakant S/o. Bhagvantrao Deshpande
Age: 57 years, Occu.: Agriculturist,
R/o. Manjari, Tq. & Dist.Latur. ..Respondents
(Org. Defendants)

Advocate for Petitioners : Mr.Amit S. Deshpande
Advocate for Respondent No.1 : Mr.P.R.Katneshwarkar h/f.
Mr.Ravibhushan P. Adgaonkar

CORAM : MANGESH S. PATIL, J.

DATE : 28 June 2022

JUDGMENT:-

Heard.

2. Rule. Rule is made returnable forthwith in both the writ petitions. Mr.P.R.Katneshwarkar, learned Advocate holding for Mr.R.P.Adgaonkar, learned Advocate waives service on behalf of respondent No.1, who is the same individual in both the matters. At the joint request of the parties, these matters are being disposed of by this common Judgment, since the two different parties are challenging the same order passed by the lower Appellate Court.

3. Respondent No.1 had filed a suit for specific performance of an agreement to sell an immovable property. The petitioners in Writ Petition No.6161 of 2022 are the legal representatives of defendant No.1 – Rameshchandra S/o. Govindram @ Govindlal Asopa and the petitioner in Writ Petition No.6580 of 2022 was arrayed as defendant No.2. The suit was dismissed and respondent No.1 challenged that Judgment and order in appeal under Section 96 of the Code of Civil Procedure before the District Court.

4. During pendency of the appeal, respondent No.1 submitted

an application seeking amendment of the plaint. The application was opposed by both the petitioners. Still, by the order under challenge, the application was allowed.

5. The learned Advocates for the petitioners would vehemently submit that though amendment of pleadings can take place even during the pendency of appeal, the proposed amendment is inconsistent with the stand being taken by respondent no.1 throughout the proceeding. The plaint as it stands prior to such amendment asserts that respondent No.1 was put in possession of the suit property pursuant to the agreement of sale. Asserting that he was put into possession of the suit property, in addition to the relief of specific performance, a relief of perpetual injunction was claimed. The trial Court dismissed the suit on all fours. It was held that respondent No.1 had failed to prove the agreement or even delivery of possession pursuant thereto. By the proposed amendment, an inconsistent stand was sought to be taken in as much as deviating from the earlier stand, pleadings have been sought to be added to the effect that during the pendency of the appeal, defendant No.1, who was the predecessor of the petitioners in Writ Petition No.6161 of 2022, entered into a compromise with respondent no.1, and pursuant to such compromise, a sale deed in respect of

3 Acres portion of the south west side of the suit property was executed in favour of respondent No.1 and it waived right to seek specific performance in respect of the north west 3 Acres portion, which the defendant No.1 – Rameshchandra sold to one Gopal Mishra and others and the dispute in respect of the eastern 3 Acres 10 Gunthas portion was kept alive. By the proposed amendment, it is further sought to be pleaded that during pendency of the appeal, respondent No.1 was dispossessed from the eastern 3 Acres 10 Gunthas portion of the suit land on 23 January 2021. By adding such averments in the plaint, even the prayer clause 3-A is sought to be added so as to add the relief of possession in respect of this 3 Acres 10 Gunthas portion.

6. The learned Advocates for the petitioners would submit that the proposed amendment was incompatible with the original stand of respondent No.1 and should not have been allowed to be incorporated by way of proposed amendment.

7. The learned Advocates for the petitioners would further submit that even the reference in the order under challenge to Section 22 of the Specific Relief Act is misplaced.

8. Mr.P.R.Katneshwarkar, learned Advocate for respondent

No.1 would support the order by submitting that it merely permits amendment of the plaint so as to incorporate the facts, which according to respondent No.1, have occurred during the pendency of the appeal.

9. I have carefully gone through the order under challenge as also the papers and considered the rival submissions.

10. It is a matter of record that respondent No.1 is seeking specific performance of an agreement by asserting that he was put into possession pursuant to the subsequent agreement whereby an amount of Rs.10,00,000/- was paid in addition to the earlier earnest money and he was put into possession of the suit land pursuant thereto. It is a matter of record that the trial Court has recorded a negative finding against the issue pertaining to the proof of agreement of sale as also pertaining to the alleged possession derived under the subsequent agreement.

11. The question is as to if the proposed amendment can be said to be inconsistent with the original pleadings. As mentioned herein above, by way of proposed amendment, respondent No.1 has tried to add the pleadings which according to it are being added in view of the supervening events. The appeal was filed

on 23 February 2017 and the proposed amendment refers to a compromise entered into between it and the original defendant No.1 – Rameshchandra and which was also produced on the record of the Appellate Court on 28 November 2017. The proposed amendment *ex facie* is in tune with the terms of such compromise. The proposed amendment also intends to incorporate the averments whereby respondent No.1 now intends to aver that on 23 January 2021, it was dispossessed from the eastern side 3 Acres 10 Gunthas portion and by adding the prayer clause 3-A, now intends to claim back possession of that portion as a part of decree for specific performance.

12. If such is the state of affairs, when respondent No.1 is intending to incorporate the averments in tune with the compromise filed before the lower Appellate Court and in tune with its averment of dispossession during pendency of the appeal, one cannot comprehend as to how such a proposed averment and the prayer is inconsistent with its earlier stand.

13. As has been rightly observed by the appellate court, veracity or otherwise of the proposed pleadings cannot be pre-judged. If the proposed amendment is touching the events, which are stated to have occurred during pendency of the

appeal, the only recourse available to such a party would be to apply for amendment of the pleadings. If and to what extent respondent No.1 would be able to prove the proposed averments and would be entitled to the additional relief being claimed is a matter to be gone into, considered and decided by the appellate court.

14. Certainly, strictly speaking a reference to Section 22 of the Specific Relief Act would be misplaced. A relief which was omitted to be claimed can be permitted to be added by resorting to that provision. Respondent No.1 was asserting his possession over the entire suit land pursuant to the agreement of sale. By the proposed amendment now it intends to establish that during the pendency of the appeal he has been dispossessed from eastern side 3 Acres 10 Gunthas portion and therefore, it is not that he is intending to claim a relief, which he had omitted to do, which is the purport and scope of the provision contained in the proviso to Section 22(2) of the Specific Relief Act. Consequently, the observation and the conclusion of the learned District Judge referring to Section 22 is not legally correct.

15. However, the fact remains that the proposed amendment sought to be made on the basis of the events, which according to

respondent No.1 have occurred during pendency of the appeal, can certainly be allowed to be incorporated.

16. Therefore, even if I am not in agreement with the reasoning in the impugned order to the extent of applicability of Section 22 of the Specific Relief Act, the other part of the reasoning, in my considered view is unassailable. There is no merit in the petitions.

17. Both the writ petitions are dismissed. Rule is discharged.

(MANGESH S. PATIL)
JUDGE

SPT