

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6672 OF 2019

Shri. Dada Shivgonda Patil and Ors.

..Petitioners

Versus

Shri. Naresh Venkatraman Revankar

Through Power of Attorney Holder

Shri. Rajesh Nagesh Revankar and Ors.

..Respondents

Mr. Prajakt M. Arjunwadkar, for the Petitioners.

Mr. Yogesh P. Morbale, for the Respondent No.1.

CORAM : NITIN W. SAMBRE, J.

DATE : 28th FEBRUARY, 2022

PC.

1. The contention of Mr. Prajakt Arjunwadkar, learned counsel for the defendants in a suit for specific performance being Special Civil Suit No.44 of 2012, who are petitioners herein is, the Court below committed an error in granting amendment, as same is in excess of the jurisdiction vested in the Trial Court. So as to substantiate the said contention, Mr. Prajakt Arjunwadkar would invite attention of this Court to the claim in the suit and written statement preferred by the defendant Nos.2 to 4. He would claim that the fact about non-existence of Gat No.899 on the date of filing of written statement was very much brought to the notice of respondent/ plaintiff. As such, plaintiff should have taken appropriate note of the same by carrying out amendment to the written statement. He would further claim that at belated stage, that too after the plaintiff has entered into the witness box and was subjected to cross-examination, the Court below committed an error in appreciating the demand of due diligence. As such, according to him, the order

impugned is not sustainable.

2. The prayer is opposed by the counsel for the respondent/plaintiff as according to him, claim about non-existence of Gat No.899 even if was pleaded by defendant Nos.2 to 4, there was privity of contract *inter se* between the plaintiff and defendant No.1 and defendant No.1 but for vague contention about non-existence of suit property has not come out with a specific case of non-existence of Gat No.899. He would further claim that only during the course of the present proceedings i.e. at the time of recording of evidence it was confirmed that alone Gat No.899 was not in existence. As such, defendant No.1 has practiced fraud on the respondent/plaintiff. As such, according to him, order impugned is just and proper for deciding its cause brought before the Court below and Court below was justified in granting amendment.

3. I have appreciated the submission.

4. The Special Civil Suit No.44 of 2012 is brought into action based on the agreement of sale dated 10th March, 2012.

5. The suit property is borrowed from the recitals to the agreement of sale and same in expressed terms speaks of property out of Gat No.899.

6. Though the present petitioners/defendant Nos.2 to 4 have claimed about non-existence of Gat No.899 and clarified that the said Gat No.899 was subdivided into 899/1, the said pleadings rather based on

the sale-deed executed in favour of the present petitioners.

7. Rather the written statement on the part of defendant No.1 with whom the plaintiff has privity of contract does not speak of non-existence of Gat No.899/1. Rather in paragraph 5, it is mentioned that Gat No.899/1 was never subjected to partition and as such said Gat number was never subjected any transaction.

8. In that view of the matter, respondent/plaintiff was justified in preferring suit claim based on Gat No.899 and not Gat No.899/1.

9. In the aforesaid said background, the Court below, in my opinion, was justified in granting amendment as was prayed by the respondent/plaintiff. Apart from above, whether to grant relief which is claimed by way of amendment is an independent issue which will be looked into and appreciated by the Trial Court. That being so, no case for interference in the extraordinary jurisdiction of this Court is made out.

10. As such, petition fails, dismissed.

[NITIN W. SAMBRE, J.]