

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

WRIT PETITION NO.1433 OF 2021

Shri. Vinod Pandurang Vajare

..Petitioner

Versus

Ajitsingh Premsingh Siyal,

Since deceased through Legal Heirs

Gurucharan Kaur Ajitsingh Siyal & Ors.

..Respondents

Mr. Mahesh Rawool i/by Avinash B. Avhad for the Petitioner.

Mr. K. S. Dewal i/by Jayesh M. Joshi for Respondent No.3.

CORAM : NITIN W. SAMBRE, J.

DATE : 25th JULY, 2022

P.C.

1. Heard.

2. In suit for eviction being RCS Suit No.150 of 2017 application Exh.84 for amendment of the plaint and application for temporary injunction came to be rejected vide order impugned dated 20th January, 2020.

3. The contentions of counsel for petitioner/plaintiff are, the suit premises were in two parts i.e. one is basement and another is ground floor. According to him, the amendment is moved amplifying the existing pleadings which in any case does not change the nature of the suit claim and that being so, without considering the said

aspect the order impugned came to be passed.

4. While countering the aforesaid submissions, Mr. K. S. Dewal, counsel appearing for the respondent/defendant would urge that this is for the third time suit is being sought to be amended. He would invite my attention to the pleadings in the written statement so as to submit that the petitioner is trying to remove the lacunas which are caused in the original pleadings in the plaint, which in any case, is not permissible. Apart from above his contentions are, it was never claim of the petitioner/plaintiff about existence of basement which is sought to be introduced by way of amendment.

5. I have appreciated the said submissions.

6. If the nature of amendment is considered in the light of the pleadings in the plaint, what can be noticed is the petitioner intend to amplify the pleadings which are already in existence paragraph 1 as regards the existence of basement and ground floor (shop block) sought to be inserted or amplified as regards destroying the premises in the basement because of the fire in 2008.

7. Whether such fact exists or not will be for the petitioner as the burden is on the petitioner for the same. In this back ground and having regard to the fact the

aforesaid contentions are not considered in the order impugned, in my opinion, the order impugned below Exh. 84 passed by the Judge, Small Causes Court, Pune on 20th January, 2020 is hereby quashed and set aside.

8. The application Exh.84 stands allowed subject to cost of Rs.5,000/- to be deposited before the Trial Court to which the respondent/defendant No.3 will be entitled to withdraw. The cost shall be deposited within four weeks from today which shall be condition precedent for carrying out amendment.

9. The petition as such stands disposed of.

10. Considering the fact that the suit is pending for last about five years and issues in the suit are already framed, hearing of the suit is expedited.

[NITIN W. SAMBRE, J.]