

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6950 OF 2018

Bhausahab Raghunath Gangurde

.. Petitioner

Versus

Nandini Baburao Kandekar and Ors.

.. Respondents

.....

- Mr. Pradeep J. Thorat, Advocate for the Petitioner.
- None for Respondents.

.....

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 13, 2022.

P.C.:

1. By the present Petition, Petitioner has prayed for the following relief:-

“b) That after perusal of the same this Hon’ble Court be pleased to quash and set aside the Judgment and Order dated 25th September, 2017 passed by the Civil Judge Senior Division Nashik in Application filed below Exhibit-59 in Special Civil Suit No.477 of 2014 and be pleased to dismiss the Application filed below Exhibit-59 in Special Civil Suit No.477 of 2014.”

2. On 22.11.2022, Petitioner was directed to serve the Respondents. Record indicates that Respondent Nos.1, 2, 4 and 5 are duly served whereas Respondent Nos.3, 6 and 7 are unserved with remark that they are not staying at the address and hence notice has been pasted.

3. Petitioner is the original Plaintiff and Respondents are the original Defendants in Special Civil Suit No.477 of 2014 pending

before the Civil Judge Senior Division, Nashik. The Suit is filed for specific performance of agreement for sale dated 11.10.2011 executed by Respondent No.1 in favour of Petitioner in respect of the suit property. It is Petitioner's case that he has also sought cancellation of the subsequent sale deed dated 02.07.2010 in respect of the suit property excluding the structures standing thereon which has been executed by Respondent No.1 in favour of Respondent No.2 behind his back of the suit property.

4. Petitioner has paid an amount of Rs.2,50,000/- at the time of execution of the agreement for sale dated 11.10.2011 out of the total consideration of Rs.4,00,000/-. Petitioner has also stated that he was put in possession of the suit property and Petitioner has let out five rooms standing on the suit property to Respondent Nos.3 to 7 on leave and license basis and is regularly collecting rent from them. Petitioner has also stated that Respondent No.1 had requested Petitioner and informed him that he shall enter into sale deed of the suit property once Respondent No.1 completes repayment of the loan which he had obtained from the Central Bank of India by mortgaging the suit property. It is the further case of the Petitioner that he has subsequently paid the balance consideration amount to Respondent No.1 but Respondent No.1 has avoided execution of sale deed and it was only in November 2014, Petitioner learnt that the suit property

was sold by Respondent No.1 to Respondent No.2 behind his back.

5. In the above background, Petitioner filed Exhibit-5 Application seeking an injunction against Respondent Nos.1 and 2 from disturbing the peaceful possession of Petitioner in respect of the suit property. The said injunction Application was partly allowed and Respondents were enjoined from obstructing the Petitioner in the suit property. Written statement was filed by both Respondents before the learned Trial Court. Respondent Nos.2 has also filed counter claim.

6. In the above background, Respondent No.2 filed Application below Exhibit-59 for amendment of plaint and written statement filed by him. According to Respondent No.2, Respondent Nos.3 to 7 are proper and necessary parties to the suit. However, according to Petitioner they are mere licensees of Petitioner and do not have any right in the suit property. Respondent No.2 contended that Respondent Nos.3 to 7 refused to pay rent to him and hence he was aggrieved. Respondent No.2 also filed Application to amend his counter claim and sought possession of the suit property from Respondent Nos.3 to 7 by the amendment. Exhibit-59 was resisted by Petitioner by filing his reply below Exhibit-65. It was stated that Respondent No.2 cannot seek amendment to the plaint as Petitioner has filed the plaint for specific performance against Respondent No.1. Further in Petitioner's suit, Respondent No.2 cannot claim and seek

possession of the suit property from the licensees of Petitioner. Alongwith the same Petitioner also filed Application below Exhibit-75 to stay the hearing of Application below Exhibit-59.

7. The learned Trial Court by order dated 25.09.2017 allowed Application below Exhibit-59 subject to payment of costs of Rs.2,000/- to the Petitioner on the ground that if the amendment is allowed, it will not change the nature of counter claim as well as the suit and to avoid multiplicity of proceedings. Further the learned Trial Court allowed impleadment of Respondent Nos.3 to 7 to the plaint.

8. Mr. Thorat has taken me through the proceedings before the Trial Court.

9. I have perused the impugned order which is a common order below Exhibit-59 and 75. Perusal of the impugned order reveals that Application below Exhibit-59 is allowed with costs and stay Application below Exhibit-75 is rejected.

10. Admittedly, Petitioner is *dominus litis* in the suit proceedings and it is his prerogative to implead Defendants to the suit and seek proper reliefs. If Respondent No.2 is aggrieved with respect to any claim or seeks any relief, then Respondent No.2 ought to file a separate suit in respect of the substantive relief claimed. The admitted position is that Respondent Nos.3 to 7 are mere licensees of Petitioner. Respondent No.2 has also admitted to the said position

when he pleads that Respondent Nos.3 to 7 refused to pay rent to him. Hence, Admittedly since Respondent Nos.3 to 7 are licensees of Petitioner, no relief is maintainable against them in the suit and they are not proper and necessary parties. It is pertinent to note that the original suit is filed for specific performance of the agreement between Petitioner and Respondent No.1. Hence, the Application for amendment of the plaint filed by Respondent No.2 for impleading third parties to the suit is not maintainable in law. It is clear that by the proposed amendment Respondent No.2 has introduced a new claim. This can be done only in a separate suit proceedings and not in the pending suit.

11. In view of the above observations and findings, I do not agree with the findings returned by the learned Trial Court in paragraph No.3 of the order. That apart, the issue relating to symbolic and actual possession of the suit property would be the subject matter of the trial to be decided by the learned Trial Court. Hence, the impugned order is not sustainable and deserves to be quashed and set aside.

12. Writ Petition is allowed in terms of prayer clause 'b' as prayed for.

13. Writ Petition disposed.

[MILIND N. JADHAV, J.]