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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1181 OF 2022**

Dinkar Krishna Pawar & Others Petitioners.

V/s

Kanchan Dinkar Pawar Respondents.

Mr. Mandar Soman for the Petitioners.

Mr. Umesh R. Mankapure for the Respondents.

CORAM: NITIN W. SAMBRE, J.

DATE: April 28, 2022

P.C.:-

1] This Petition is by the Plaintiff to Special Civil Suit No.1120 of 2020. In the said suit for specific performance based on consent agreement dated 25/11/2013, injunction is also sought not to create third party interest or to alienate or create charge over the suit property.

2] Application-Exhibit 24 for amendment of the Plaint is rejected vide impugned order dated March 19, 2021. As such, this Petition.

3] Heard Mr. Soman, Counsel for the Petitioner and Mr.

Mankapure, Counsel for Respondents/Defendants.

4] Contentions are, the suit was initiated for specific performance based on the agreement dated 25/11/2013. The Respondents/Defendants filed their Written Statement and have denied execution of the same. As a consequence, Defendant No.1 has claimed ownership right over the suit property.

5] It is claimed that based on the said stand, amendment is sought whereby relief of partition to the extent of 1/6th share by declaring alleged Gift Deed between Defendant Nos. 1 and 2 dated 25/3/2013 as null and void is sought. According to him, alternative prayer can always be made and that being so, Court below committed an error in rejecting the prayer. He has also drawn support from the judgment of this Court in the matter of *Krishnabai C. Kadam & Others vs. Wellworth Developers & Others* reported in **2000(4) Bom.C.R. 757**, so as to claim that the Petitioner can take inconsistent pleas. He has also drawn support from the Division Bench Judgment of this Court in the matter of *Nilkanth Dhondiba Chavan since deceased by his heirs and*

others vs. Umabai Anant Desai & others reported in **2005(2) Bom.C.R. 220** so as to claim that in a suit for specific performance of contract, if alternative relief of redemption of mortgage or cancelling of debt is made, same cannot be said to be inconsistent pleas. It is claimed that amended pleas are based on proper construction of the documents and their contents.

6] Mr. Mankaure, Counsel for the Respondents would support the order impugned. According to him, Plaintiff since has cited the cause based on Written Statement in support of the prayer for amendment, Court is required to be sensitive to the fact that the plea which was already available was not raised. According to him, Court below was justified in inferring that inconsistent pleas cannot be permitted to be raised by the Plaintiff.

7] Considered rival submissions.

8] The suit of the Plaintiff is based on agreement of sale dated 25/11/2013 which is in relation to 5000 sq.ft. plot out of survey

No.2/2 with prayer for possession. By way of amendment, it is sought to be claimed by the Petitioner that he is entitled for relief of partition to the extent of 1/6th share in the very suit property by setting aside the Gift Deed dated 25/03/2013. The said Gift Deed was executed by Defendant No.2 in favour of Defendant No.1. It is not the case of the Petitioner that said fact was not within his knowledge. Rather, Petitioner/Plaintiff has come out with a case in the Plaint that contrary to the aforesaid agreement between Plaintiff and Defendant No. 1, Defendant No.2 has given consent in relation to the said property in favour of Defendant No.1. As such, what can be noticed from the contents of the pleadings in the plaint and prayer for amendment is, in a suit for specific performance, Petitioner is seeking partition and separate possession by way of amendment, so also challenge is sought to be raised to the Gift Deed executed by Defendant No.2 in favour of Defendant No.1 on 25/3/2013.

9] Initial prayer of the Petitioner/Plaintiff for specific performance presupposes title of the Respondents/Defendants over the property against the Petitioner/Plaintiff, whereas such title is sought to be

disputed by way of inserting amendment, questioning validity of the Gift Deed and as such a plea for setting aside of Gift Deed is also sought to be inserted. As such, at the face value, pleadings sought to be inserted are not only inconsistent but are at great variance. Plaintiff cannot be permitted way of amendment to raise inconsistent pleas even though Mr. Soman Counsel for the Petitioners claims that independent suit for partition is maintainable, hence such pleadings can be permitted to be inserted by way of amendment so as to avoid multiplicity of litigation. However, Court is required to be sensitive to the principle of law that inconsistent pleadings cannot be permitted to be raised. Though the Petitioners have placed reliance on the judgment of this Court in the matter of *Krishnabai C. Kadam* cited supra, so as to claim that inconsistent pleas can be raised, the same contentions are completely misplaced as can be ascertained upon perusal of the said judgment. The Appex Court in the law laid down in the matter of *Prem Raj vs. The D.L.F. Housing and Construction (Private) Ltd* referred above, was sensitive to the fact that Plaintiff cannot be permitted to take inconsistent pleas. The only exception that was drawn is, in case if Defendant specifically agrees in clear

terms to the alternative plea taken by the Plaintiff, such alternative plea will stand on different footing than the one as is claimed by the Plaintiff. Under Order VII Rule 7 of the C.P.C., Plaintiff is not permitted to claim inconsistent relief. If we appreciate the language of Order VII Rule 7, the words “general or other relief” cannot be said to include inconsistent relief. This Court in *M/s Vaishnavi Sai Shri Mahalaxmi Jagdamba Shikshan Sanstha, Nagpur vs. Purva Vidarbha Mahila Parishad* reported in **2022(1) ALL MR 343** has held that contrary plea or new case or an attempt to resile from the categorical position taken in the plaint, cannot be permitted to be inserted by way of amendment. It is also held that mutually destructive pleas cannot be permitted to be brought in by way of amendment.

10] In that view of the matter, contention of Mr. Soni that if independent suit is maintainable then why cannot the Petitioner be permitted to amend the Plaint is rightly so rejected by the Trial Court. That being so, no case for interference is made out. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)