

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 1634 of 2022

[Abdul Sattar Mohiyoddin (Dead) through LRs Abdul Kalim Abdul Sattar and ors. **..vs..** Abdul Jabbar
S/o Abdul Raheman and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. K. Mohta, Advocate for the petitioners

CORAM : ROHIT B. DEO, J.

DATED : 4-4-2022

The petitioners are assailing the order dated 12-11-2021 rendered by the Civil Judge Junior Division, Karanja (Lad) in Regular Civil Suit 13/2013 whereby the application preferred by the petitioners – defendants under Order VI Rule 17 of the Code of Civil Procedure, 1908 (Code) is rejected on the premise that the amendment seeks to introduce an entirely new version.

2. According to the learned counsel for the petitioners, the amendment was consequential since the plaintiff was permitted to amend the plaint to incorporate the pleading that during the pendency of the suit for possession, the defendants demolished the southern wall of the suit house and sold teak wood worth Rs. 1,00,000/- (Rupees One Lac) from the suit house.

3. I entirely agree with the view of the learned trial Judge that the amendment application preferred by the defendants went way beyond the permissible scope and under the garb of consequentially amending the written statement, an entirely new and different story is introduced.

4. The defendants could have rested by incorporating their version of the incident of the alleged demolition and theft of teak wood. However, perusal of the amendment application which is rejected by the order impugned reveals that in the proposed paragraph 4A, the following pleadings are sought to be introduced.

“Para 4A : That all the contents regarding the demolition of the structure over the suit property and southern wall of the suit property, selling of the teak wood worth of Rs. 1,00,000/- (Rs. One Lakh Only) are all false and fabricated and hence are denied in toto. That filing of the complaint with the Police Station Karanja is matter of record. The contents of the police complaint are hereby denied in toto. It is submitted that the legal heirs of the defendant no. 1 had become owner of the suit property by virtue of deed of Partition document no. 1232/1965 dated 29/07/1965, sale deed bearing document no. 897/1972 dated 17/07/1972, exchange deed bearing document no. 898/1972 dated 17/07/1972 & possession Receipt dated 17/7/1972. Mehernama Deed bearing document no. 881/1971 dated 06/11/1971, gift deed bearing document no.

882/1971 dated 06/11/1971, sale deed bearing document no. 93/1983 dated 18/01/1983, sale deed bearing document no. 1692/1985 dated 09/12/1985, sale deed bearing document no. 1624/1986 dated 22/08/1986, sale deed bearing document no. 1623/1986 dated 22/08/1986, relinquishment deed bearing document no. 4179/2016 dated 04/11/2016. That the name of the defendant no. 1 and after his demise the name of the legal heirs of the defendant no. 1 are mutated in the Nazul Record and Municipal Council Karanja Record as owner and possessor. That the defendant no. 1 and, after his demise, the legal heirs of the defendant no. 1 are paying the Municipal taxes regularly. That the Municipal Council Karanja on 08/10/2020 had issued the notice u/s 195 of Maharashtra Municipal Council, Nagar Panchayat, Industrial Township Act 1965, in the name of the defendant no. 1 and thereby had directed the defendant no. 1 (now dead his legal heirs) to demolition the structure over the suit property as the said structure is very old and may cause damage to the people in the nearby vicinity. That the legal heirs of the defendant no. 1 had followed the order given by the Municipal Council Karanja.”

5. The trial has commenced and the evidence of the plaintiff is over. In this view of the matter, no fault can be found with the order impugned to the extent that under the shelter of the right to consequentially amend the written statement, new and additional facts cannot be permitted to be introduced. The proviso to Order VI Rule 17 of the Code is clearly triggered.

6. The petition is dismissed.
7. However, the petitioners are at liberty to file an appropriate amendment application strictly restricting to the denial of the version of the plaintiff that the southern wall of the suit house was demolished and teak wood was stolen.
8. The trial Court shall decide the suit expeditiously.

JUDGE

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