

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1290 OF 2021

Ambadas Balaji Sontakke Vs. Sheikh Mujafar Sheikh Chand

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

Court's or Judge's orders

Mr. R.T.Anthony, Advocate for petitioner
Mr. D.L.Dharmadhikari, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 17/08/2022

1] Heard Mr. Anthony, learned counsel for the petitioner and Mr. Dharmadhikari, learned counsel for the respondent.

2] The petition challenges the order dated 16.3.2020 (page 98), whereby the application for amendment filed by the petitioner/appellant for amendment of the plaint at the appellate stage has been rejected.

3] Mr. Anthony, learned counsel for the petitioner submits that by the proposed amendment what was being sought was merely a plea and a relief to seek compensation from the defendant who was the proposed purchaser, as in the suit filed by the plaintiff/appellant who was the owner of the property, specific performance has been directed. It is submitted that the question of amendment has to be viewed in a different light in a suit

for specific performance, considering the language of Section 21 of the Specific Relief Act, where the amendment merely relates to a claim for compensation. It is submitted that the learned trial Court did not take into consideration the mandate of Section 21 of the Specific Relief Act and therefore erred in passing the impugned order.

4] Mr. Dharmadhikari, learned counsel for the respondent submits that the suit as filed by the plaintiff/appellant/petitioner was not a suit for specific performance but was for declaration, permanent injunction and possession. He submits that it was permissible for the plaintiff/petitioner to have raised a claim for compensation before the trial Court and the fact that it has not been so done, would disentitle the plaintiff/petitioner from claiming the same at an appellate stage. He therefore submits that the impugned order is correct and the petition is required to be dismissed.

5] It cannot be disputed that the legal position regarding amendment of a claim for compensation in a suit for specific performance would not stand on the same footing as a claim for amendment under Order VI Rule 17 of the CPC for the reason that Section 21 of the Specific Relief Act confers a special benefit and right upon the party seeking compensation in a suit for specific

performance, to make that claim at any stage of the proceedings in addition to a claim for specific performance. The language of Section 21 of the Specific Relief Act grants such a right to claim compensation in addition to specific performance. The language of Section 21 of the Specific Relief Act is mandatory in nature and is very widely worded. However, what is necessary to note is that the amendment which is being sought to be done by the application below Exh. 13 is not restricted purely to the plea of compensation, but seeks to raise various other pleas regarding readiness and willingness as well as the existence of regularization letter and therefore is not a plea which is restricted to a claim for compensation. Had the amendment being restricted pure and simple for a claim of compensation, that perhaps could have been allowed even at the appellate stage, considering the language of Section 21 of Specific Relief Act, however, by using the mandate of Section 21 of the Specific Relief Act, the basic pleas in the plaint relating to readiness and willingness etc., which have already been adjudicated upon by the learned trial Court cannot be permitted to be amended. That being the position, I do not see any reason to interfere with the impugned order. The petition is therefore dismissed.

6] It is however made clear that in case an amendment is filed by the petitioner before the learned appellate Court restricted purely to the claim of

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compensation, without touching the merits or demerits of the plea for specific performance, the same can be considered by the learned appellate Court in light of the mandatory provision of Section 21 of the Specific Relief Act. No costs.

JUDGE

Rvjalit