

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5682 OF 2022

Ambadas Govind Bhimanpalli

...Petitioner

Vs

Rajendra Narshingrao Boga & Ors.

...Respondents

...

Mr. Sarang S. Aradhye, a/w. Ms. Gauri Velankar for Petitioner.

Mr. Ashok B. Tajane, for Respondent Nos. 1 to 3.

...

CORAM: SANDEEP V. MARNE, J.

DATE : JULY 28, 2023.

P.C.:

By this petition Petitioner challenges order dated December 01, 2021 passed by the Civil Judge, Senior Division, Solapur allowing application of Plaintiffs-Respondents for amendment of the plaint.

2. Plaintiffs-Respondents have filed Special Civil Suit No. 204 of 2015 for execution of sale-deed in their favour of the suit property by the defendants by accepting the principal loan amount of Rs.3,50,000/-. The suit proceeds on the pleadings that the Plaintiff's father had given the suit property on rent to the Defendant and later, since Plaintiffs' father was in need of financial assistance, he executed the sale-deed of the suit property in favour of the Defendant on April 23, 2012. It is Plaintiffs' case that the property was ever never intended to be sold but merely provided as a security for repayment of loan of Rs.3,50,000/-. It is Plaintiff's case that their father paid interest to

the Defendant during his lifetime and after his death Plaintiffs are paying interest to the Defendant. That when the Plaintiffs approached Defendant with a view to repay the loan amount, he failed to execute the sale-deed of the suit property in their name.

3. It appears that the trial in the suit commenced and after commencement of the trial, Plaintiffs moved an application for amendment of the plaint on October 08, 2021. The Trial Court proceeded to allow the application subject to payment of costs of Rs.1,000/-.

4. Mr. Aradhye learned counsel appearing for the Petitioner would submit that the proposed amendment, particularly paragraph No.2(a) thereof would change the entire nature of the suit. He would submit that initially Plaintiffs have admitted execution of sale-deed in favour of the Defendant and now they want to change the nature of transaction to that of rental agreement. He would further submit that the Plaintiffs failed to show due diligence and filed the application for amendment even after commencement of the trial. That the reason of the Advocate of the Plaintiffs not being conversant in English language, cannot be accepted for introducing amendment at such a belated stage.

5. Mr. Tajane learned counsel for the Respondent would oppose the petition and support the order passed by the Trial Court.

6. I have gone through the plaint as well as amendment sought to be incorporated therein. The main objection of Mr. Aradhye is to the incorporation of paragraph No.2(a) in the plaint. Paragraph No.2(a) of the plaint reads thus-

“2a) That the Plaintiffs father decided to give the above mentioned property in para no.1 i.e. a hall and a kitchen to the defendant on lumpsum basis. That the Plaintiffs father took amount of Rs.1,50,000/- from the defendant and thereby allowed to use a hall and kitchen thereby executing agreement dated 18/05/2009 and getting it notarized with Adv. Rajgopal Vidap at Sr.no.1307. That the plaintiffs father in short rented the premises to the defendant on lumpsum basis without any monthly rent. That it was agreed between the parties that the defendant shall vacate the premises on the repayment of Rs.1,50,000/- done by the Plaintiffs father. In this way the defendant entered into suit premises.”

7. For the sake of convenience the original pleadings in the plaint in paragraph No.3 are reproduced as under-

“3. That, said Narsingrao Rajayya Boga during his life time had given portion of said flat No. 1 viz; the portion described above (one room, kitchen and WC, having built up area of 27.53 Sq. Mt.) on rent. The defendant accordingly occupied possession of the said suit property as tenant and started residing there along with his family. In the meantime, said Narsingrao Boga was in need of money and as he came to know that the defendant has been doing money lending business, said Narsingrao Boga approached the defendant and requested him to render financial assistance to him. The defendant showed his readiness to render financial help to said Narsingrao Boga on certain condition. The defendant accordingly paid to said Narsingrao Boga amount of Rs. 3,56,000/(Rs. Three Lakh fifty six thousand) as hand loan, and by way of security for the said loan, the defendant has got executed from said Narsingrao Boga, a registered sale deed in respect of the suit property, which has already been in his possession as tenant. The defendant had also obtained signatures of the plaintiffs as consenting party. The said sale deed is registered in the Office of Sub Registrar, Solapur at Sr. No. 5716 of 2012 dated 23.7.2012. It was agreed in between the predecessor of the plaintiffs viz; Narsingrao Boga and the defendant that on repayment of entire loan amount with interest, the defendant would execute sale deed in respect of suit property back in favour of said Narsingrao Boga. Thus, the sale deed executed in favour of defendant in respect of the suit property as such was not executed with intent to sell out the said rooms that is to say the suit property but same has been executed just by way of security.

At that time, predecessor in title of suit property of the plaintiffs viz; Naringrao Boga had told the defendant that same being the room and kitchen of one flat, same cannot be sold as such. Thereupon the defendant said to Narsingrao Boga that there is no question of legality or illegality because the sale deed was being executed just by way of security. However, when said Narsingrao Boga and plaintiffs asked the defendant as to how they should rely words of the defendant regarding execution of sale deed back in their favour, the defendant has executed kararpavati in favour of said Narsingrao Boga and the plaintiffs by mentioning therein the facts and assuring the plaintiffs about execution of sale deed back in favour of said Narisngrao Boga and plaintiffs.”

8. In the proposed amendment, the Plaintiffs are not seeking deletion of pleadings in paragraph No.3 of the plaint. In the plaint itself the Plaintiffs averred that the suit property was occupied by the Defendant initially as a tenant. Now by way of amendment the Plaintiffs wants to add the exact transaction by which the property was offered to the Defendant as a tenant. I do not think that such an addition of the plaint would change the nature of the suit.

9. So far as delay in filing the application for amendment is concerned, the Trial Court has already imposed costs on the Plaintiffs.

10. I therefore do not find any reason to inter in the order passed by the Trial Court. Writ Petition being devoid of merit, is dismissed without any order as to costs.

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(SANDEEP V. MARNE, J.)