

Sonali

SONALI
MILIND
PATIL
Digitally
signed by
SONALI
MILIND
PATIL
Date:
2023.07.03
15:03:13
+0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 5709 OF 2021
WITH
INTERIM APPLICATION NO.1854 OF 2023**

Pawan Kumar Gulabchand Jain ...Petitioner

Versus

Paras Sundarji Dedhia & Ors. ...Respondents

Mr. G. B. Bhatt, for the Petitioner.

Mr. Akash Dilip Gavand, Respondent No.3-present.

CORAM : MADHAV J. JAMDAR, J.

DATED : 23rd JUNE 2023

P.C. :

1. Heard Mr. Bhatt, learned counsel appearing for the Petitioner.
2. The Petitioner who is the original Plaintiff has filed the present Writ Petition under Article 227 of the Constitution of India challenging the legality and validity of the order dated 5th October 2019 passed by the learned Judge, Small Causes Court, Mumbai below Exhibit 29 in R.A.D. Suit No.203 of 2015 as well as order dated 20th March 2021 passed in Revision Application No.332 of 2019 by the Revisional Court of Small Causes, Mumbai. By said application bearing Exhibit-29, the Petitioner i.e. the Plaintiff sought amendment of the plaint seeking to implead proposed Defendant Nos.2 and 3 as party and also to bring on record certain

Sonali

correspondence which has been made with Defendant Nos. 2 and 3.

3. The Petitioner-Plaintiff filed said suit seeking declaration of tenancy against original Defendant i.e. landlord. The learned Trial Court rejected the said application by observing that the proposed Defendant Nos.2 and 3 have sold the property to the original Defendant and therefore, they have no right, title and interest with respect to the said property. As far as the correspondence or other documents which are sought to be brought on record, it has been observed that the same can be brought on record in accordance with the mode available in law. The learned Trial Court held that the proposed Defendant Nos.2 and 3 are neither necessary parties nor the proper parties. The learned Revisional Court has dismissed the revision. The learned Revisional Court observed that Order VI Rule 17 of the Code of Civil Procedure, 1908 regarding amendment in pleadings is for determination of real question in controversy between the parties. It has been observed that as the property has been sold by the proposed Defendants to original Defendant, they are neither necessary parties nor proper parties to the suit which has been filed for declaration of tenancy rights against the original Defendant.

4. Mr. Bhatt, learned counsel appearing for the Petitioner has relied on

the decision of Supreme Court in the matter of **Baldev Singh & Ors. vs. Manohar Singh & Anr.**¹. In the said decision, it has been observed that it is well settled that Court should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. The Supreme Court has relied on the observation of Privy Council in the case of **Ma Shwe Mya vs. Maung Mo Hnaung** (AIR 1992 P. C. 249) wherein, it has been observed by the Privy Council that all rules of Courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised.

5. It is true that the Court should be extremely liberal while allowing the amendment and proviso to Order VI Rule 17 of C.P.C. contemplates that all pre-trial amendments be granted liberally. However, in the present case, the parties to the said R.A.D. Suit No.203 of 2015 are the Petitioner and the Respondent No.1. The Petitioner specifically sought prayer that he be declared as lawful existing tenant of Defendant i.e. Paras Sundarji Dedhia. By the proposed amendment, the Petitioner sought impleadment of Shri. Dilip

1 2006 6 SCC 498

Arjun Gavand and Shri. Bharat Arjun Gavand as Defendant Nos. 2 and 3.

6. It is admitted position that by registered Sale Deed dated 13th April 2012, the said proposed Defendant Nos.2 and 3 have sold the property to the original Defendant. Both the Courts have rightly observed that the proposed Defendant Nos.2 and 3 have sold the suit property to the original Defendant and therefore, the proposed Defendant Nos.2 and 3 have no right, title and interest with respect to the suit property. Both the Courts have observed that by proposed amendment, the Plaintiff is not seeking amendment in the prayer clause. As far as various documents/correspondence which are referred in the proposed amendment, the Courts have observed that the same can be brought on record by available mode in accordance with law. Therefore, this is not a case where interference of this Court is required under Article 227 of the Constitution of India.

7. The Writ Petition is dismissed however, with no order as to costs.

8. In view of the dismissal of the Writ Petition, nothing survives in the Interim Application and the same is also dismissed.

[MADHAV J. JAMDAR, J.]