

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

WRIT PETITION NO. 1412 OF 2022

Shivaling Appasaheb Handifhod

...Petitioner

Versus

Sushila Irrappa Baluragi & Ors.

...Respondents

Mr. Padmanabh D. Pise, for the Petitioner

Mr. Akshay Kulkarni i/b Mr. A. M. Kulkarni for Respondent No. 1.

Mr. Shivaji Masal for Respondent No. 3.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 01st AUGUST, 2023.

P.C.:

. Heard.

2. The challenge in the petition is to the order dated 28th September, 2018 allowing the Respondents' application for amendment of the plaint. The suit i.e. R.C.S. No. 676 of 2012 was instituted on 03rd December, 2012 seeking specific performance of agreement of sale. The agreement for sale was executed between the plaintiff and defendant No. 1 on 19th May, 2010. Subsequently,

there was a sale deed executed between defendant Nos. 1 and 2 dated 12th June, 2012 and between defendant Nos. 2 and 7 dated 5th October, 2016. By the proposed amendment the plaintiff sought to bring the said facts on record and to challenge those sale deeds.

3. Learned Counsel appearing for the Petitioner submits that as regards the sale deed dated 12th June, 2012, the same was mentioned in paragraph 7 of the suit as well as in the written statement which was filed on 05th April, 2014. He would further submit that although the knowledge was acquired on 05th January, 2018, the application for amendment simpliciter produces the schedule of amendment and there are no averments made therein. He would urge that the amendment being a post trial amendment, proviso to Order 6, Rule 70 prohibits the amendment.

4. *Per contra* learned Counsel appearing for the Respondents submits that the amendments in question are necessary for adjudicating the real controversy and to prevent the multiplicity of the proceedings. He would submit that as stated in the proposed amendment, which is at page 69 of the petition, the knowledge as far as the sale deed of 2016 is concerned, was acquired during the

cross-examination and as such there is no failure of due diligence.

5. Considered the submissions.

6. The application seeking amendment of the plaint leaves much to be desired. Perusal of the application indicates that the application consists of schedule of the amendments with the prayer clause. There are absolutely no pleadings therein as to the nature of the suit, the averments to the plaint, the proposed amendment date of knowledge etc., which are necessary ingredients while seeking post trial amendment. In the present case the application is completely bereft of any details and, therefore, this Court is constrained to look into the schedule of amendments itself to determine as to whether the same could have been allowed.

7. The trial Court has allowed the application on the ground that the cross-examination of the defendant was not over and as the execution of the subsequent sale deeds is in question to avoid the multiplicity of proceedings, it is appropriate to permit the proposed amendment subject to payment of cost. However, it needs to be noted that as far as the proposed amendment in respect of the sale deed of 12th June, 2012 is concerned, the same was within the

knowledge of the plaintiff, which is evident from the averments in the plaint. In that respect, the proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908 bars the Court to permit the post trial amendment. As regards the proposed amendment pertaining to the sale deed dated 5th October, 2016 is concerned, the schedule of the amendment indicates that the same came to his knowledge during the cross-examination on 05th January, 2018. The proviso to Order 6 Rule 17 permits an amendment, if it is established that the matter which is sought to be raised after the trial has commenced could not have, in spite of due diligence, being raised before the commencement of the trial. In the present case it is the specific assertion in the proposed amendment that the document came to his knowledge during the cross-examination. That being so the proposed amendment at paragraph 8B, 12G and 12F excluding the averments as regards sale deed No. 1607/ 2012 are required to be allowed.

8. The impugned order dated 28th September, 2018 is partly modified to the extent of permitting the proposed amendment at paragraph 8B, 12G and 12F excluding the averments as regards sale deed No. 1607/ 2012 of the application for amendment dated 16th March, 2018, subject to the payment of cost as already stated in

the impugned order dated 28th September, 2018. Writ Petition stands allowed in the above terms.

9. Needless to clarify that paragraph 12F which also refers to the sale deed of 2012 and as such seeks amendment in respect of both the sale deeds to be regarded so as to refer to only sale deed of the year 2016.

(SHARMILA U. DESHMUKH J.)