

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

Writ Petition (WP) No. 5797 of 2022

Sunil S/o Ramgarib Yadav (Gavali)

Versus

Anupanna @ Nandini W/o Pramod Shewale

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri K.P.Sadavarte, Advocate for the petitioner.

Shri R.P.Waghmare, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 25th JANUARY, 2023.

Heard.

2. In this writ petition, the order dated 20th July, 2022 passed below Exhibit 99 by the Judge Small Causes Court, Nagpur rejecting the application for amendment and order dated 27th November, 2021 passed below Exhibit 43, is under challenge.

3. The petitioner / defendant wanted to add following paragraphs in written statement by way of amendment. The proposed amendment reads thus:

29(A). It is submitted that the plaintiff has suppressed the material facts on record and has not whisper a single word in plaint in suit that she had executed registered sale deed of tenanted suit house along with her family members i.e. (1) Shri Yogesh Gangadhar Bhagat (2) Smt. Ranjana Prasad Bhagat (3) Ku. Bhagyashree Prasad Bhagat (4) Ku. Neha Prashant Bhagat (5) Miss

Rajashree Prashant Bhagat in favour of (1) Smt. Ravindra w/o Khupchand Nankani and (2) Faruk S/o Abdul Azia Ranguoonwala in respect of the tenanted suit house no.782 along with the adjacent NMC suit House No.783. It is further submitted that the plaintiff has filed the present suit on 19.03.2018. However, she had executed the registered sale deed of tenanted suit house on dated 01.03.2016. Therefore, the plaintiff was not the owner and landlord of the defendant at the time of filing of suit for eviction, possession and recovery of arrears of rent under Section 15 and 16 of the Maharashtra Rent Control Act. Thus, the suit filed by the plaintiff does not fall within the ambit and scope of the provisions of the Maharashtra Rent Control Act, 1999. Thus, on this count also the suit is liable to be dismissed.

29(B). It is further submitted that the legal notice issued and served by plaintiff dated 16.06.2017 vide Exh.18 and another legal notice issued by plaintiff on 07.11.2017 at Exh.21 upon the defendant are against the ambit and scope of the Maharashtra Rent Control Act, 1999. However, at the time of issuance of the above said legal notices, the plaintiff was not the owner and landlord of the defendant due to the execution and registration of sale deed dated 01.03.2016 of the suit house premises in favour of (1) Smt. Ravindra W/o Khupchand Nankani and (2) Faruk S/o Abdul Aziz Rangunwala. Therefore, the present suit filed itself is not maintainable as per ambit and scope of the provisions of the Maharashtra Rent Control Act, 1999. Therefore, the plaintiff is not entitled for the reliefs claimed as prayed in suit. And accordingly the suit is liable to dismissed on this count also.”

4. The learned trial Court while rejecting the amendment application has observed that the fact of sale-deed and transfer of title in favour of Ravindra

Khupchand Nandkani and Farukh Abdul Aziz Rangunwala is already stated in paragraph 26 of the written statement. The paragraph 26 of the written statement which reads thus:

“26. It is further submitted that the plaintiff has executed a sale deed of the suit house and other adjacent premises belonging to plaintiff in favour of Smt. Ravindra Khupchand Nandkani and Farukh Abdul Azia Rangunwala vide its registered sale deed dated 29.02.2016. Therefore, the plaintiff is required to get vacate the said tenanted suit house from the defendant.”

5. The learned trial Court has therefore observed that since the petitioner is not bringing any new fact on record, but he wants to further elaborate the fact which has already been stated in paragraph 26 of the written statement, the application was rejected. The findings recorded by the learned trial Court while rejecting the application which read thus :

5. It is seen that the proposed amendment in paragraph No. 29(1) and 29(b) in written statement is in respect of execution of sale deed by the plaintiff on 01/03/2016 i.e. prior to the filing of the suit. On perusal of written statement Exh.12(b), paragraph No.26, it is seen that the defendant has already stated this Court that the plaintiff had executed sale deed of the suit house and other adjacent premises belonging to the plaintiff in favour of Ravindra Khupchand Nandkani and Farukh Abdul Aziz Rangunwala on

29/02/2016. The sale deed filed on record below Exh.97 is of 29/02/2016. Thus, by way of this proposed amendment, the defendant is not informing this Court about any new fact came to his knowledge subsequently. Thus, I found no reason to allow the amendment as proposed by the defendant.”

6. Considering the pleadings made by the petitioner in paragraph 26 of the written statement and as it is the case of the petitioner that the said fact has not been denied by the plaintiff, I am of the opinion that no error has been committed by the learned trial Court while rejecting the application for amendment Exh.99.

7. So far as challenge to the order passed upon deposition sheet at Exh.43 of Defendant Witness No.1, dated 27th November, 2021, refusing to grant permission for re-examination to the learned advocate for the defendant as the court found that there is no ambiguity in cross-examination of the plaintiff. Re-examination of the witness for document filed alongwith list Exhibit 97 was sought i.e in respect of sale-deed which was permitted to place on record by the trial Court by order dated 27th November, 2021.

8. After going through the cross-examination of the plaintiff, it can be seen that no suggestion was given to the plaintiff in cross-examination as regards the sale-deed dated 29th February, 2016. Though in the

written statement the pleadings to that effect are made in paragraph 26. The learned trial Court thus, has rightly observed that there is no ambiguity in the oral evidence of the plaintiff and accordingly, the permission was rejected.

9. In view of the above said observations, I am of the opinion that the learned trial Court has not committed any error while rejecting the applications for amendment and refusing to re-examination. Hence, I do not find any merit in the petition. The petition is dismissed.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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