



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

933 WRIT PETITION NO. 10226 OF 2023

Savita Ramrao Bhalchim

....Petitioner

VERSUS

Shakuntala Manikrao Bhaskare

.....Respondent

.....

Mr. S. V. Dixit, Advocate for the Petitioner.

Mr. S. C. Bhosale, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 3rd JULY, 2024.

PER COURT :

1. Petitioner/original Defendant in Regular Civil Suit No. 23/2016 takes exception to the order dated 25.08.2022 passed below Exhibit 41 whereby application for amendment filed under Order 6 Rule 17 of Code of Civil Procedure is allowed.

2. Plaintiff filed suit against Defendant for injunction and restraining Defendant from creating third party interest in the suit property claiming that on the basis of agreement to sale dated 19.04.2012, she was put in possession of the property. Suit is filed on 08.01.2016. After framing of the issues, the suit is at the stage of recording of evidence of Plaintiff. Examination-in-chief is filed. At

this stage, application is moved on 06.08.2022 seeking amendment to the plaint for incorporating relief of specific performance of contract. This application is opposed by Defendant with a specific contention that such relief is barred by limitation.

3. Trial Court, however, allowed the application with a reason that the proposed amendment appears to be necessary for avoiding multiplicity of litigation. It is observed that no prejudice will be caused to the Defendant if the said amendment is allowed.

4. Since the application for amendment is filed after commencement of trial, in view of proviso to Order 6 Rule 17 of Code of Civil Procedure, it is incumbent on the part of the Plaintiff to show due diligence and unless due diligence is shown, such application cannot be allowed by the Trial Court. Facts as they appear from record indicate that Plaintiff has filed the suit on the basis of agreement to sale dated 19.04.2012. Thus, it cannot be said that any fact has come to his notice subsequently in order to cause any amendment to the plaint. There is nothing in the application to indicate that inspite of due diligence such prayer of specific performance could not have been made.

5. It is trite that amendment cannot be allowed if it causes prejudice to the other side. Here in this case, on the face of it, agreement in question is dated 19.04.2012 and specific performance was required to be sought within three years thereof. Though suit is filed on 08.01.2016, Plaintiff has not found it necessary to seek specific performance till the date of filing of application for amendment of plaint. On the face of it, therefore, the suit for specific performance is time bared. Certainly prejudice and irreparable loss will cause to the Defendant and in such circumstances, amendment sought at this stage ought not to have been allowed by the Trial Court.

6. In view of above discussion, case is made out to cause interference in the impugned order as a result of which, the impugned order is set aside. Petition is allowed in terms of prayer clause 'A'.

(R. M. JOSHI)
Judge