

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3946 OF 2023

Swati Dhanraj Kadadi

.. Petitioner

Versus

Dilip Baburao Chavan and Anr.

.. Respondents

.....

- Mr. Hrishikesh Sopan Shinde, Advocate for Petitioner.
- Mr. Shrishail Sakhare, Advocate for Respondent Nos.1 and 2.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 31, 2024

P.C.:

1. Heard Mr. Shinde, learned Advocate for Petitioner and Mr. Sakhare, learned Advocate for Respondent Nos.1 and 2.

2. By virtue of the impugned order dated 06.12.2022, Application filed below Exhibit-18 under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') by the Plaintiff stands rejected. Briefly stated suit is filed in the year 2017 seeking recovery of an amount of Rs.27,00,000/- under the development Agreement executed between the parties. There is no dispute on the facts of the case. Under the development Agreement, Plaintiff is entitled to Rs.2,41,00,000/- whereas he was paid an amount of Rs.2,14,00,000/- as contended by him in the suit plaint. The Developer who is Defendant in the suit has denied the case of Plaintiff as according to Developer the entire amount has been paid over.

3. Be that as it may, recovery of such amount would be subject matter of trial as also evidence that will be led by the parties. After a hiatus of five years, Plaintiff filed the present Application below Exhibit-18 seeking amendment to now implead a relief for possession. According to Plaintiff under the development Agreement, apart from the amount of Rs.2,41,00,000/-, he was also entitled to built up area of 9,000 sq.ft. of suit land / property. Since the property has been developed, Plaintiff sought the amendment in the pending Recovery suit for possession under the development Agreement; since both causes of action emanate from the same development Agreement.

4. By virtue of the amendment, Plaintiff sought recovery of possession of 9,000 sq.ft. of constructed area which was constructed by the Developer on the suit land. Learned Trial Court held that the said amendment cannot be allowed as it will change the nature of the suit and convert a suit for recovery of money into a suit for possession.

5. *Prima facie*, I agree with the findings returned by the learned Trial Court but Plaintiff also needs to be protected with respect to his substantive rights to receive constructed area of 9,000 sq.ft. under the said development Agreement as pleaded by him. It cannot be said that Plaintiff's right to litigate and seek the constructed area if he is entitled to it under the development Agreement stands defeated by virtue of the impugned order having rejected the Plaintiff's application. Hence,

keeping the right of the Plaintiff open with respect to recovery of the constructed area under the development Agreement if so entitled and strictly in accordance with law, the impugned order is sustained. Plaintiff may file any proceeding as available to him in law for the same.

6. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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