

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5461 OF 2022

Rajendra Ganpatrao Dhumal and Ors.

.. Petitioners

Versus

Vijay Bapusaheb Jadhav and Anr.

.. Respondents

.....

- Mr. Vaibhav Ramchandra Gaikwad, Advocate for Petitioners.
- Mr. Milind Deshmukh, Advocate for Respondent No.1.
- Mr. Sandesh V. Kate i./by Mr. Avinash H. Fatangare, Advocate for Respondent Nos.2(B) to 2(F).

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 23, 2024

P.C.:

1. Heard Mr. Gaikwad, learned Advocate for Petitioner, Mr. Deshmukh, learned Advocate for Respondent No.1 and Mr. Kate, learned Advocate for Respondent Nos.2(B) to 2(F).

2. By the present Writ Petition, order dated 23.11.2021 passed by learned Trial Court in Application filed below Exhibit-52 under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') by the Plaintiff seeking amendment to the suit plaint has been allowed and the same is challenged by the Defendants before me.

3. Mr. Gaikwad, learned Advocate appears for Petitioners – Defendants and Mr. Deshmukh, learned Advocate appears for contesting Respondent No.1 who is Plaintiff before the Trial Court.

4. After perusing the impugned order, suit plaint and the

pleadings with the able assistance of both the learned Advocates at the bar, it is seen that the Plaintiff has entered into Memorandum of Understanding (for short '**MOU**') with Defendant No.1 on 17.12.2013 and issued an Affidavit dated 16.02.2015 whereby there was an Agreement between parties to sell the suit property to Plaintiff. It is so stated in paragraph No.8 of the suit plaint. It is stated by Plaintiff that Defendants had received an amount of Rs.10,00,000/- at that time under that MOU / Agreement. Plaintiff has not taken any steps to seek specific performance of that MOU / Agreement thereafter i.e. after the year 2013 or to fructify that Agreement.

5. It is seen that subsequently Defendant No.1 entered into a registered sale deed with Defendant Nos.2 to 5 in respect of the same subject suit property which was the subject matter of the previous Agreement between the Plaintiff and Defendant No.1. This sale deed was registered on 13.07.2015. According to Plaintiff, he came to know about the execution of this registered sale deed on 06.04.2016. It is averred in the suit plaint that he applied to the Sub-Registrar of Assurances and procured certified copy of the said sale deed dated 13.04.2016 and thereafter addressed a legal notice through his Advocate to the Defendant No.1 on 07.06.2016. Thereafter Plaintiff filed Special Civil Suit No.101 of 2016 on 04.07.2016 in the Trial Court seeking principal relief of cancellation of the registered sale deed dated 13.07.2015 alongwith prayer for injunction against Defendant

Nos.2 to 5.

6. In the above background, Plaintiff filed Application below Exhibit-52 seeking amendment to the suit plaint. This Application is filed on 26.02.2021 i.e. after 5 years. In this Application, Plaintiff sought specific performance of the Agreement / Affidavit / MOU executed with Defendant No.1 dated 17.12.2013 for the first time in the year 2021 in the present pending suit proceedings. According to Plaintiff, since there is a MOU / Agreement between Plaintiff and Defendant No.1 in respect of same subject suit property, amendment for introducing the relief of specific performance of the said Agreement should be allowed in the present suit filed by the Plaintiff for seeking cancellation of the registered sale deed between the Defendants. On the face of record, the nexus and privity of contract between Plaintiff and Defendant No.1 *qua* the Agreement / MOU / Affidavit dated 17.12.2013 in respect of the suit property is a completely different cause of action altogether than the relief of cancellation of the Sale Deed in the present Suit. It is an admitted position that the said Agreement / Affidavit / MOU has not been fructified.

7. In the meanwhile, Defendant No.1 who is owner of the suit property has already relinquished his entire rights in suit property by a registered sale deed in favour of Defendant Nos.2 to 5. Plaintiff has filed the present suit seeking cancellation of Agreement between the

Defendants primarily and on the premise that Defendant No.1 had only agreed to sell the suit property to the Plaintiff. The terms and conditions of Agreement between Plaintiff and Defendant No.1 shall ultimately decide and determine the nature of Plaintiff's right in the suit property for seeking cancellation of the registered sale deed executed between the Defendants. But before that happens, Plaintiff cannot seek specific performance of his own MOU / Agreement of 2013 executed with Defendant No.1 in the present suit proceedings. This is because both causes of action are entirely different and in contradistinction to each other.

8. It is a clear case on the basis of the above facts that nothing would preclude Defendant No.1 from selling his property to the Defendant Nos.2 to 5 which he has done by virtue of the registered sale deed. However, in so far Plaintiff is concerned, apart from the fact that his Application for impleadment of relief of specific performance would be hit by limitation, it is clear that Plaintiff has no substantive right in the property on the basis of the alleged Agreement / Affidavit / MOU dated 17.12.2013 which has not been fructified at all.

9. Considering that both the aforesaid issue are completely different causes of action, learned Trial Court ought to have appreciated the same. However perusal of the impugned order dated 23.11.2021 shows that learned Trial Court has considered Plaintiff's

case sympathetically. In paragraph No.7, Trial Court has returned a finding that if said amendment is not allowed, it would undoubtedly lead to multifarious proceedings and litigation between the parties. The question that is required to be answered in such facts is that whether Plaintiff has any substantive right to seek such an amendment. There is no doubt that Plaintiff may have right to seek return of his monies from the Defendant No.1 under the alleged Agreement / Affidavit / MOU, but the said right of the Plaintiff cannot be juxtaposed and combined with Plaintiff's suit seeking cancellation of the registered Agreement between the Defendants. The only commonality with respect to the aforesaid incidents is that suit property is common and nothing more. Defendant No.1 incidentally is the common party to both the transactions but both the transactions between parties thereto are completely different in terms of rights amenable to the parties to seek enforcement and relief in the Court of law. Both transactions and reliefs under the said two transactions cannot be combined by the Plaintiff in the same case. If any such right is amenable to Plaintiff to seek return of his monies or specific performance from Defendant No.1, he shall be entitled to do so by filing an appropriate proceedings in the appropriate forum / Court that would be available to him in law.

10. Next learned Trial Court in paragraph No.8 of the impugned order has stated that if the said amendment is allowed, it may relate

back in point of time to the date of filing of the suit and in that view of the matter, learned Trial Court has infact rejected Plaintiff's case for giving him the benefit of limitation. It is categorically stated in paragraph No.8 that Plaintiff will not be entitled to rely upon the date of filing of suit in so far as maintaining his plea for specific performance of the alleged MOU / Affidavit / Agreement of 17.12.2013. Once that is case then that said amendment ought to have been disallowed on the ground of limitation by the Trial Court. In that view of the matter, learned Trial Court has made a clear error apparent on face of record by allowing the amendment to the Plaintiff.

11. Next Trial Court has stated that Plaintiff can be put to rest and if costs are paid it would be adequate remedy to allow the amendment. It needs to be reiterated time and again that merely levying of costs is not an answer to allow such an amendment under Order VI Rule 17 of the CPC. What is important to note is the twin causes of action which are completely different from each other. Both the causes of action namely specific performance of alleged MOU / Agreement / Affidavit dated 17.12.2013 and the plea for cancellation of the registered sale deed dated 13.07.2015 are completely different causes of action having emanated at different points of time between different parties.

12. In view of the above observations and findings, I am not in

agreement with the findings returned in the impugned order dated 23.11.2021 and it requires to be revisited and interfered with. Hence, impugned order stands quashed and set aside. Resultantly Application filed below Exhibit-52 stands rejected. Needless to state that Special Civil Suit No.101 of 2016 shall proceed on the basis of its own merits and strictly in accordance with law and learned Trial Court shall not be influenced by any observations made in any of the order including this order and determine the said suit on the basis of evidence led by Plaintiff and evidence led by Defendants in rebuttal in accordance with law.

13. With the above directions, Writ Petition stands allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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HARSHADA
HANUMANT
SAWANT
Date: 2024.09.27
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