

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7256 OF 2023

Manik Dattu Shinde

Petitioner

.. (Org. Plaintiff)

Versus

Malan Sitaram Dhekale

Respondent

.. (Org. Defendant)

-
- Mr. Nikhil Narendra Pawar, Advocate for Petitioner.
 - Mr. Umesh Hanumantrao Pawar, Advocate for Respondent.
-

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 15, 2024

P.C.:

1. Heard Mr. Nikhil Pawar, learned Advocate appearing for the Petitioner – Plaintiff before the Trial Court and Mr. Umesh Pawar, learned Advocate appearing for Respondent – Defendant.

2. The Writ Petition impugns rejection of an amendment Application filed by the Plaintiff below Exhibit-50 in Regular Civil Suit No.735 of 2021.

3. In the suit proceedings filed by the Plaintiff originally seeking injunction pursuant to and under the Agreement dated 18.10.2008 executed between the parties, the Plaintiff filed Application for amendment seeking compensation and damages. The claim for seeking compensation and damages according to Mr. Pawar was not prayed for in the original suit but was in fact stated so in the

suit plaint and to that effect he has drawn my attention to paragraph No.5 of the suit plaint wherein it is delineated that pursuant to agreement between the parties and subsequent events that had occurred the Plaintiff was yet to receive an amount of Rs.10,70,000/-. According to Plaintiff an amount Rs.8,70,000/- was due and payable to the Plaintiff and an amount of Rs.2,00,000/- was towards the damages caused by Defendant's relatives in the said land by destroying standing crops.

4. It is seen that the Defendant filed a counter claim in the said suit proceedings seeking redemption of the mortgage under the Agreement dated 18.10.2008 executed between the parties. At this stage it needs to be noted that Agreement between the parties was in respect of mortgage of the said land and payment of amounts between the parties over a period of 12 years during which the said land stood mortgaged. Before the present suit was filed by the Plaintiff immediately after execution of the aforesaid Agreement in the year 2008, the Defendant had himself filed the suit for cancellation of said mortgage deed.

5. Both the learned Advocates are *ad idem* and inform the Court that the said Suit being Regular Civil Suit No.100 of 2008 filed by Defendant was dismissed on merits resultantly allowing the Agreement dated 18.10.2008 to subsist between the parties.

6. *Prima facie*, it appears that when the 12 years period would come to an end, the Defendant may have attempted to create disturbance in the Plaintiff's possession and that is the reason that Plaintiff filed Regular Civil Suit No.735 of 2021 seeking injunction. Plaintiff's witness action was completed in the Suit. Cross-examination of Plaintiff is appended at page No.44 of the Writ Petition. The fact that original Agreement dated 18.10.2008 executed between the parties was in respect of mortgage of the suit land has been delineated and admitted in cross-examination by the Plaintiff. However in so far as the issue of any balance amount or any further amount is concerned as it appears in paragraph Nos.5 and 6 of the suit plaint, there is a categorical denial in paragraph No.3 of his cross-examination of ever having any transaction in respect of that amount. In this context, the reliefs prayed for in the Suit Plaint by the Plaintiff therefore became important. When it is clear admission of the Plaintiff that original claim between the parties dated 18.10.2008 pertains to transaction of mortgage between the parties which could be redeemed after 12 years, it could not lie in Plaintiff's mouth to now attempt and change the nature of the entire cause of action in the suit proceedings.

7. Mr. Nikhil Pawar though has argued that substantial amount is due and payable from the Defendant, but if that would have been the case, Plaintiff would have approached the Court for a declaration

rather than only injunction. No such declaratory relief was sought in the suit plaint in the first instance. Though Mr. Pawar has further argued that filing of the previous suit by the Defendant seeking cancellation of the mortgage deed between the parties would be detrimental to the case of the Defendant, that can only be seen after he leads his evidence and the Plaintiff cross-examines him on that subject.

8. However, Mr. Umesh Pawar would submit and argue that introducing a prayer for seeking compensation and damages would not be justifiable to the original cause of action as it would clearly change the nature of the suit proceedings which has been filed on the basis of the Agreement / mortgage deed dated 18.10.2008 executed between the parties. He would submit that on that basis, learned Trial Court has correctly assessed the aforesaid issue and has also commented upon the alleged transaction having been completed by the Plaintiff, and has returned a cogent finding that both causes of action are therefore entirely different.

9. In view of the above facts, the order dated 02.03.2023 is sustained and confirmed. Needless to state that it shall be open to the Plaintiff to pursue any remedy available to the Plaintiff as available in law for return of any amount which the Plaintiff may claim from the Defendant strictly in accordance with law. In so far the present

Regular Civil Suit No.735 of 2021 is concerned, the same shall proceed strictly in accordance with law and shall be disposed of by the Trial Court as expeditiously as possible.

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

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
SAWANT

Digitally signed by
HARSHADA
HANUMANT SAWANT
Date: 2024.04.04
18:17:42 +0530