

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 7348 OF 2023

Sunil Shankar Patil

.. Petitioner

Versus

Rajat Education Society & Ors.

.. Respondents

.....

- Mr. C.G. Gavnekar a/w Mr. Rohit Parab for Petitioner
- Mr. Umesh Hanmantrao Pawar for Respondent No. 1

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 31, 2024

P. C.:

1. Heard Mr. Gavnekar, learned Advocate for Petitioner and Mr. Pawar, learned Advocate for Respondent No. 1.

2. By virtue of the impugned order dated 28.04.2023 passed by learned Trial Court below Exh. 39 in RCS No. 252/2021 which is appended at page Nos. 71-74 of the Petition, the Application filed by Plaintiff (Petitioner herein) before the Trial Court seeking amendment to the Suit plaint stands rejected.

3. Mr. Gavnekar in his usual fairness would point out to the Court that the said amendment was necessitated in view of the written statement filed by Defendants as also certain acts on the part of the private Defendants in dealing with the Suit property subsequent to filing of the Suit proceedings. He would submit that principal Suit is filed by the Plaintiff seeking directions against Defendant No. 1 Trust

and Defendant No. 2 Nagar Parishad (Respondent Nos. 1 & 2 herein). At this stage, it is not required to enter into the controversy with respect to what directions have been sought since that is not the subject matter of the present Writ Petition. It is seen that when the Suit was filed, the Plaintiff impleaded Rajat Education Society through its Chairman and Secretary as Defendant No. 1. However, in the written statement which has been filed by the Trust, it is averred and an objection is raised that the Suit is filed only against the Defendant Trust without impleading its trustees as proper and necessary parties. Strictly speaking trustees by name would be amenable to change on every change report after every few years or the happening of any exigency and therefore they will not be strictly required to be impleaded as parties. However, in the present case, Plaintiff filed the Application below Exh. 39 in view of the specific objection raised by Defendant No. 1 Trust for seeking impleadment of the trustees of the trust which is seen from paragraph No. 1 of the Application. Said Application is appended at Exh. F, page Nos. 60-67 of the Petition. I have perused the same. It is seen that names of the present trustees of Defendant No. 1 Trust are mentioned in the said Application under reference along with all their details and a plea is made to the Court to permit the Plaintiff to amend the cause title of the Suit plaint and implead the said trustees of the Trust as Defendant Nos. 7 to 14 in the

suit proceedings. In so far as this issue is concerned, Mr. Pawar would submit that the amendment seeks mere impleadment without giving any reasons whatsoever and therefore has rightly been rejected. What is significant to note is the fact that the said amendment arises out of the objection raised by the Defendant No. 1 Trust itself and therefore it cannot lie in the mouth of the Defendant No. 1 Trust to now oppose the said amendment. In any event impleadment of the trustees to the Suit proceedings is only for the purpose of nomenclature since Defendant No. 1 Trust is the lessee of the property which is adjacent to the Suit property which gives rise to the filing of the present Suit proceedings for the reliefs in the Suit. In view of the above, this objection of the Trust cannot be sustained and the impleadment of trustees deserves to be allowed.

4. Plaintiff has next sought amendment to the Suit plaint as delineated in paragraph No. 2 of his Application filed below Exh. 39. I have perused the said paragraph under reference. Said paragraph records that subsequent to filing of the present Suit proceedings by Plaintiff, the Trust continued with the construction and has now completed construction upto the 4th floor. Though there are many convoluted and unnecessary facts stated in the paragraph of amendment, the reason for the said amendment is nothing but to place on record the subsequent development and construction

completed in respect of the Suit property than what it was at the time of filing of the Suit proceedings. In my opinion considering that this is a pre-trial amendment before commencement of the Suit, and at this stage only the issues have been framed, the said amendment being associated with subsequent events only in respect of the Suit property ought to have been allowed. However allowing the said amendment would undoubtedly give a peremptory right to the Defendant to file additional written statement to the amended suit plaint and that right can never be denied to Defendants. It is seen that coupled with the amendment which is sought in paragraph No. 2, a consequential relief to that extent has also been sought by the Plaintiff in paragraph No. 6 of the said Application. The said relief being clearly a consequential relief due to the subsequent development deserved to be allowed, otherwise the amendment would be rendered infructuous. No prejudice will be caused to the Defendants at this stage if the entire aforesaid amendment is allowed. The grounds given for rejection of the Application seeking amendment enumerated in paragraph No. 5 of the impugned order are clearly unsustainable. Merely because there is a reference given in the proposed amendment to Government officials who are Defendant Nos. 3 to 6, that cannot be a reason to reject the Application and the amendment. Ultimately the Suit will have to be proceeded and / or succeeded on the basis of the evidence to be led by

the Plaintiff as against the construction carried on the property belonging to the Defendant No. 1 with respect to any alleged encroachment and that also *qua* the role of the Government Officials. Therefore the findings returned in paragraph No. 5 of the impugned order cannot be sustained and deserve to be interfered with in the interest of justice.

5. In view of my above observations, impugned order dated 28.04.2023 is not sustainable and it is therefore quashed and set aside resultantly allowing the Application filed below Exh. 39. Amendment is permitted to be carried out as proposed in paragraph Nos. 1 to 4 and 6 in the Application filed below Exh. 39 within a period of one week from today. Once the said amendment is carried out, copy of the amendment suit plaint shall be served on all Defendants and learned Trial Court shall issue summons to the newly added Defendants and thereafter proceed with the Suit strictly in accordance with law.

6. From the date of service of the said amended Suit plaint, Defendants shall be entitled to file their additional written statement to the extent of the amendment allowed within a period of two weeks thereafter.

7. Once the aforesaid pleadings are completed, the parties shall be at liberty to frame an appropriate issue, if so desired, with respect to

the amended pleadings and / or even propose modification to the issues which have been already framed to the Trial Court.

8. At the joint request made by both the learned Advocates, learned Trial Court is directed to decide RCS No. 252/2021 as expeditiously as possible and strictly in accordance with law after allowing both the parties to lead their respective evidence.

9. Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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