

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6909 OF 2022

Bhaskar Digambar Patil
(since deceased) through Legal Heirs
Balaji Bhaskar Patil & Ors.

.. Petitioners

Versus

Sitabai Vijay Sadaphule & Anr.

.. Respondents

.....

- Mr. Prasad Pradeep Kulkarni for Petitioners
- Mr. Pramod Pawar for Respondents

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 10, 2024

P. C.:

1. Heard Mr. Kulkarni, learned Advocate for Petitioners and Mr. Pawar, learned Advocate for Respondents.

2. After hearing Mr. Kulkarni at the time of mentioning on 20.06.2024, this Court passed the following order:-

- "1. Mentioned. Not on Board. Taken on Board.
2. Heard Mr. Kulkarni, learned Advocate for Petitioners.
3. Perused the praecipe dated 20.06.2024 and the Writ Petition.
4. By order dated 22.06.2023, notices were issued in the present case by the Court. Mr. Kulkarni would inform the Court on mentioning that Respondents have been duly served and Affidavit-of-service has been filed. He would also inform that Respondents are now represented by Advocate.
5. He has drawn my attention to the impugned order dated 21.09.2019 passed below Exhibit-86 filed by the Plaintiffs under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short '**CPC**') in Special Civil Suit No.7 of 2007 which is at Exhibit-G, page No.36 of the Writ Petition to amend the suit plaint on several grounds.
6. Though Application is filed much belatedly since suit is of the year 2007, it pertains to placing on record and bringing on record mortgage

transactions in terms of Appendix-46 of the CPC so that on technicality or technical grounds, suit shall not be dismissed.

7. Mr. Kulkarni would inform the Court that evidence of Plaintiffs is over and the witness of Defendants is to step in the witness box. He would submit that save and except placing the said chart on record alongwith details of claims in the suit, the Plaintiffs will not seek any further examination of Plaintiffs again. He would submit that the ground on which the Application has been rejected and as stated in paragraph No.3 is untenable.

8. I have perused the impugned order dated 21.09.2019. One of the principal reason given by learned Trial Court is that allowing such an amendment shall change the suit rather nature of the suit. Prima facie, I do not think so. However, since notices have been issued by this Court, I would like to list the matter so as to enable Respondents to enter their appearances.

9. Copy of this order shall be served by learned Advocate for Petitioners on learned Advocate for Respondents. It is clarified that if Respondents are served and do not remain present on the next adjourned date, this Court shall be compelled to determine the Writ Petition in accordance with law. Respondents are directed to file Affidavit-in-Reply if they so desire and remain present on the next adjourned date. A server copy of this order shall be served on Trial Court and is directed to defer the hearing in the present suit proceedings to a future date until the present Writ Petition is decided.

10. Stand over to 10th July, 2024 at 02.30 p.m."

3. Today Mr. Pawar, learned Advocate enters appearance for Respondents.

4. Mr. Kulkarni would submit that though the Suit has been filed as far back as in 2007 for redemption of mortgage, Plaintiffs (Petitioners herein) would like to clarify the details of the mortgage by placing on record a charge so as to clarify the position of redemption of mortgage. It is seen that witness action of the Plaintiffs is over and the Defendants' witness action is in progress. At this stage allowing such Application on the part of the Plaintiffs cannot be permitted. Suit plaint with respect to redemption of mortgage will have necessary

averments and the Plaintiffs are at liberty to refer to the mortgage documents as available to him in law and argue the same before the Trial Court.

5. Mr. Kulkarni would next submit that the Plaintiffs should not be precluded and prohibited from placing on record the necessary requirements as per Appendix A(46) of the CPC in a Suit filed for redemption of mortgage. Plaintiffs have filed the Suit in 2007 and witness action of Defendants is in progress. At this stage they cannot be allowed to rectify any of the Plaintiffs' action and put the details under Appendix A(46) as desired by the Plaintiffs. Be that as it may Defendants' witness action is under progress and cross-examination is yet to begin. Plaintiffs can adequately put their case to Defendants in Defendant's cross-examination subject to it being permissible in law. Keeping all issues open in so far as both the parties are concerned, the impugned order is sustained. Writ Petition is disposed.

6. Ad-interim stay, if any granted earlier stands vacated.

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2024.07.10
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+0530