

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17210 OF 2024

Jahangir Ismail Shaikh	]
Age – 48 years, Occu. - Agriculturist	]
R/o. At Piliv, Tal. Malshiras,	]
Dist. - Solapur	]... Petitioner

Versus

- | | | |
|----|---|------------------|
| 1. | Sachdev Chitragand Mahamuni |] |
| | Age – 55 years, Occu. - Business, |] |
| | R/o. Piliv, Tal. - Malshiras, |] |
| | Dist. - Solapur |] |
| | Presently R/o. Pinak Prasad, |] |
| | Plot No.-A, Third floor, New Palace Road, |] |
| | Kolhapur. |] |
| 2. | Vinayak Chitragand Mahamuni |] |
| | Age – 70 years, Occu. - Agriculturist |] |
| 3. | Ramchandra Chitragand Mahamuni |] |
| | Age – 65 years, Occu. - Agriculturist |] |
| 4. | Shrikant Chitragand Mahamuni |] |
| | Age – 60 years, Occu. - Agriculturist |] |
| | Respondents No.2 to 5 R/o. Piliv, |] |
| | Tal. Malshiras, Dist. - Solapur. |] |
| 5. | Mangal Shankar Potdar |] |
| | Age – 50 years, Occu. - Housewife, |] |
| | R/o. Konheri, Post – Papari, |] |
| | Tal. Malshiras, Dist. - Solapur. |]... Respondents |

Mr. Satish Raut :-

Advocate for Petitioner.

CORAM : S. M. MODAK, J.

DATE : 5th DECEMBER 2024**ORAL ORDER :-**

1. Matter is taken on board by way of praecipe in view of the urgency. The order which is challenged in this Writ Petition is passed by the trial Court on 22nd August 2024. It is on the application at Exhibit No.336 filed by defendant No.6 – present petitioner. By the said order the trial Court rejected the said application. The impugned order is on page No.82 of the compilation submitted by learned Advocate for the petitioner.

2. The application at Exhibit No.336 was filed by the petitioner in Regular Civil Suit No.102 of 2019. The following request was made :-

Defendant No.6 is the purchaser of Gat No.1118 and 1120. The issues framed by the trial Court on 5th March 2019 and on 29th April 2024 are on Page No.78. The issue for which there was request for deletion is issue No.17 which reads thus :-

‘Does plaintiff prove that, during pendency of suit and inspite of injunction order defendant No.6 purchased the suit property?’

3. The contention is *when the trial Court has concluded to decide application below Exhibit No.336 at the time of Judgment, there was no compelling reason for the trial Court to take up the application below Exhibit No.336 for fresh hearing.* Now the Suit is fixed for final arguments on 13th December 2024. The apprehension of the petitioner is if his request below Exhibit No.336 for deletion is rejected then he is prevented from arguing the matter finally on the basis of said issue. **In view of this urgency I have heard learned Advocate.**

4. I have perused both the orders dated 11th June 2024 and 22nd August 2024. **Once the learned trial Judge has concluded to decide Exhibit No.336 at the time of Judgment even I find no compelling reason for the same Judge to pass the order on 22nd August 2024. At least I find no reasoning for conducting fresh hearing on the said application.**

5. **So I am inclined to set aside the order dated 22nd August 2024.** No doubt the issues can be altered and amended prior to

pronouncement of Judgment. This power can also be exercised when requested by the parties. There is no prohibition in law exercising such power on its own. **But once order dated 11th June 2024 is passed, learned trial Judge cannot pass a subsequent order thereby taking different decision.** It amounts to reviewing the earlier order. Review is permissible only for the reasons provided under the provisions of CPC.

6. Considering these circumstances, I am disposing this petition with certain observations. I have not expressed any opinion about the power of the Court to pass a different order. That is why I am not felt it necessary to issue notice to Respondent. No purpose will be served by issuing the notice and keeping the petition pending. Because Suit is for judgment.

7. There is one more reason if the notice is issued, unnecessarily there is possibility that the further hearing of the Suit which is at flag end will be stalled. Hence, I pass following order:-

ORDER

- (i) Order dated 22nd August 2024 passed by the Court of Civil Judge Senior Division, Malshiras on Exhibit No.336 in Regular Civil Suit No.102 of 2019 is set aside.

- (ii) If the learned trial Judge thought it fit to pass an order which is different from the view expressed in the order dated 11th June 2024 then he can resort to said power only if the case is made out and after hearing parties.
- (iii) This Court has not expressed any observations about the merits of the case.
- (iv) The parties to act on authenticated copy of this order.

[S. M. MODAK, J.]

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