

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2074 OF 2024

Lata Ashok Kale and Anr.

.. Petitioners

Versus

Sudam Kisan Gamne and Ors.

.. Respondents

-
- Mr. Harshad M. Inamdar, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 20, 2024.

P.C.:

- 1.** Heard Mr. Inamdar, learned Advocate for Petitioners.
- 2.** Petitioners are the Plaintiffs in Special Civil Suit No.317 of 2013. Originally the Suit was filed as Suit No.458 of 1997 and subsequently renumbered. The Suit is for specific performance of Agreement dated 27.06.1996 in respect of the Plaintiffs having purchased undivided shares of some of the coparceners in joint family property. This is the admitted position and hence Plaintiffs would have no option until division of shares would take place between the coparceners and joint holders of the Suit property Regular Civil Suit No.241 of 1998 was filed by Defendant Nos.1, 4 to 7 against the other joint holders and this Suit for partition amongst them was compromised leading to division of shares. The compromise is dated 20.07.1999. It is the Petitioners' case that though Petitioner No.1 was

aware about the compromise then the question that begs an answer is why the Petitioners did not claim the share which was purchased by them for which specific performance was sought in the Suit plaint. This having not been done, time passed by until 2022 when the Petitioners i.e. original Plaintiffs filed Application on 18.04.2022 seeking a substantive amendment to the original Suit plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short “CPC”).

3. Mr. Inamdar has drawn my attention to the amendment contained in the said Application below paragraph Nos.6(C) to 6(E). While giving reference to the Suit bearing No.241 of 1998 which was compromised in the year 1999, the amendment is sought in the year 2020. Substantive amendment is to the effect is that in place of the original Suit for specific performance in which the Defendants would be required to pay the amount of Rs.21 lakhs, Plaintiffs now claim that it is virtually impossible to get the said undivided shares and therefore seek an alternative relief of payment of an amount of Rs.2 crores and 21 lakhs as damages and compensation in addition to the original amount.

4. Though Mr. Inamdar would submit that interlocutory order was passed by this Court in Appeal From Order proceedings against an order passed in the Suit before the Trial Court, this Court had directed

Plaintiffs to deposit an amount of Rs.10.5 lakhs to show their bonafides, which stands deposited. He would next submit that provisions of Section 22 of the Specific Relief Act, 1963 enure and enable the Plaintiffs to make an amendment to the extent made in the Application under Order VI Rule 17 of the CPC if the principal relief prayed for by the Plaintiffs is incapable of performance and in that view of the matter, Application has been filed. The question however would be at what stage such an Application is made.

5. Before I come to the impugned order passed by the learned Trial Court dismissing that Application, I need to comment upon the Application *per se*. In so far as the transaction between parties is concerned, which is the subject matter of the original Suit No.458 of 1997, the same can succeed or fail on the basis of the facts proved by the parties in respect of seeking specific performance of the Agreement dated 27.06.1996.

6. Mr. Inamdar would submit that Application below Exhibit “5” was allowed by the learned Trial Court. Be that as it may, undoubtedly there is a reference to the amounts which finds mention in the original Agreement, but after a hiatus of almost 23 years despite the partition Suit between the parties having been compromised and decreed in 1999, cause of action to the Plaintiffs to pray for alternative relief of damages for claiming Rs.2 crores at this stage is completely

untenable in law and is a clear afterthought which will change the nature of the Suit proceedings. When I went through the Application filed by the Plaintiffs, it is seen that it is a mere Application without assigning any reason whatsoever as to how the Plaintiffs can make such an Application in the first instance itself at this stage. Every opportunity was available to Plaintiffs to approach the Trial Court once the shares of the parties were determined by virtue of the compromise effected in the year 1999. Plaintiffs failed to take any steps. The present Application has been filed seeking substantive amendment to introduce the relief for seeking damages and compensation of Rs.2 crores without assigning any reasons either in facts or in law and therefore deserves to be dismissed with costs and that is exactly what the learned Trial Court has done. Payment of costs however awarded is very meagre according to me. It rather should have been dismissed with exemplary costs. The learned Trial Court while considering the Application considered the facts of the present case. It is seen that despite the Suit having been filed in the year 1997, Plaintiffs sought amendment to the Suit plaint in view of that very partition decree dated 20.07.1999 in the year 2005 itself and had already added the requisite pleading in respect thereof. Once that being done and the learned Trial Court having framed the appropriate issues thereon as far back as in 2015, after almost 7 years thereafter, the Plaintiffs have now come up with this Application seeking alternative relief of damages

and compensation of Rs.2 crores.

7. Learned Trial Court has rightly held that the Plaintiffs have not contended nor given a singular reason as to why and how such an amendment to the Suit plaint can be allowed at this stage, notwithstanding the fact that no reason has been given as to how the said amendment was not made at an earlier point of time.

8. On the degree of reasonableness, the present Application has been comprehensively dismissed by the learned Trial Court to claim additional compensation in the manner in which it is claimed.

9. In the amendment Application reference is to the proposed amendment under paragraph No.6(E) and the aforesaid facts are clearly borne out. There is no reason whatsoever that can be found as to how the Plaintiffs seek compensation or damages of Rs.2 crores and in what capacity or context or reasons therefor. Hence, I am compelled to observe that such an amendment is nothing but an extortionist approach in so far as the present Application is concerned. The learned Trial Court after giving cogent reasons on the overall conduct of the Plaintiffs in the present case which is referred to and alluded to herein above has rejected the Application. Undoubtedly on allowing such an Application, severe prejudice would be caused to the Defendants. Such amendment certainty cannot be deemed to be just and necessary at all in any context whatsoever and it is merely introduced to prolong and

protract the trial.

10. Such an amendment Application should be dealt with strictly by Courts so as not to allow delaying tactics on the part of the Plaintiffs. Learned Trial Court has incidentally returned similar reasons and has also stated that it is necessary to impose costs on Plaintiffs. Hence while retaining and upholding the order dated 20.10.2023, only the costs awarded by the learned Trial Court being meagre are now increased to Rs.5,000/- to be paid to the Kirtikar Law Library, High Court, Mumbai within a period of two weeks from today by the Petitioners. Receipt of payment of costs shall be placed before the learned Trial Court for further consideration of the Suit proceedings.

11. It is clarified that in so far as the Suit proceedings are concerned, the learned Trial Court shall not be influenced by any observations made in this order as they are *prima facie* in nature and decide the pending Suit strictly in accordance with law.

12. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

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