

Ajay

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

WRIT PETITION NO. 3422 OF 2024

Shreeji Developers and Ors.

.. Petitioners

Versus

~~Maruti Moru Deshmukh~~ (Since Deceased),

Through his Legal Heirs

Sushila Moru Deshmukh and Ors.

.. Respondents

-
- Mr. R.R. Salvi i/by Mr. Sameer K. Sawant, Advocate for Petitioners.
-

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 11, 2024.

P.C.:

1. Heard Mr. Salvi, learned Advocate for Petitioners who are Defendant Nos.19 to 23.

2. In the present case, it is seen that Suit is filed in the year 1983 for declaratory reliefs and various other reliefs in respect of an Agreement of the year 1975 by the Plaintiffs and amendment Application is filed by Plaintiffs in the year 2019 stating that after taking inspection and receiving certified copies from the office of the Sub-Registrar, Plaintiffs have found out that Defendant Nos.19 to 23 have executed a Development Agreement dated 11.02.2016 in respect of the Suit property.

3. It is Plaintiffs' case that considering the challenge maintained in the Suit proceedings as also various orders passed by the learned

Trial Court, such a course of action on behalf of Defendant Nos.19 to 23 was not permissible when the Suit was pending. Hence the amendment Application was filed, which has been allowed by the Trial Court. Defendant Nos.19 to 23 are aggrieved with the amendment which is allowed and have challenged the same in this Petition.

4. Be that as it may, by virtue of the Chamber Summons an effective challenge is now maintained to the said Development Agreement also and the learned Trial Court has held that it is an important subsequent event touching the Suit property itself and hence the proposed amendment has been allowed and more specifically so when Defendant Nos.19 to 23 have suppressed the said Agreement and have executed the same during the pendency of the Suit.

5. *Prima facie*, I see no reason to interfere with the impugned order in allowing the subsequent event to be brought on record in respect of the Suit property and therefore the said order has been correctly passed by the learned Trial Court by giving cogent reasons in paragraph Nos.9 to 13 of the said order. Paragraph Nos.9 to 13 read thus:-

“9. I have considered submissions and perused the record. The development agreement sought to be incorporated and challenge in the pleading is executed by defendant Nos. 19 to 23. They were added as defendants in the earlier amendment taken place in the year 2015. Thus, parties to the suit had got executed said development agreement from defendant Nos. 1(a) to 1(c) during pendency of suit. It appears from the contents of the said development agreement that it is in respect of suit property and there is reference of rights claimed by deceased plaintiff No.1 in the present suit. Thus, execution of

development agreement is an important subsequent event in respect of the subject matter of the suit. Plaintiffs are seeking declaration regarding agreement for sale dtd. 27-05-1975. Plaintiffs alternatively claimed right of ownership on the basis of said agreement. The right of original plaintiff and subsequently of plaintiff No.1 and defendant Nos. 1(a) to 1(c) flows from same agreement. Defendant Nos. 19 to 23 got executed development agreement dtd. 11-02-2016 from defendant Nos.1(a) to 1(c) and agreement for sale dtd. 27-05-1975 is the foundation of rights of defendant Nos. 1(a) to 1(c). Execution of the development agreement between parties to the suit during the pendency of the suit is an important subsequent event. Therefore the proposed amendment is necessary.

10. Development agreement was executed on 11-02-2016. At that time Chamber Summons No. 2354 of 2015 was pending for hearing. It may be noted that, defendant Nos. 19 to 23 had not disclosed the development agreement dtd. 11-02-2016 before this court, at the time of hearing of Chamber Summons No. 2354 of 2015 nor before the Hon'ble High Court in the Writ Petition No. 13791 of 2017. It shows that, there is suppression of this material development. Development agreement sought to be challenged is in respect of the suit property and in between defendant Nos. 1(a) to 1(c) and defendant Nos. 19 to 23. Hence, plaintiffs have right to challenge the same by way of proposed amendment even though there is no temporary injunction in favour of plaintiffs. The same cannot be a ground to incorporate the rights of relief of prayer clause(b). Whether plaintiffs are entitled for such relief is a matter of adjudication separately and for that reason amendment cannot be refused.

11. So far as increase of valuation is concerned, recently the pecuniary jurisdiction of this court is increased upto Rs.10 crores. Hence, submission that the value of development agreement dtd. 11-02-2016 would increase valuation of suit and it will be beyond pecuniary jurisdiction of this court has no substance.

12. I have gone through the rulings relied upon Ld. Advocate for the plaintiffs and defendants. In **Asian Hotels** (cited supra), the licensee had sought to challenge the mortgages and charge of entire property. Said mortgages were prior to licensee of plaintiff. Under licensee agreement, licensor had right to create mortgage/charge. The plaintiff was challenging the mortgages prior to the suit. In the instant case, plaintiffs is alternatively claiming his co-ownership on the basis of agreement of 1975 which is foundation of the rights of defendant Nos. 1(a) to 1(c) also. Thus, the facts of the instant case are quite different then facts in the cited case. Hence, with due respect, said ruling is not helpful to defendants.

13. For the above reasons, I hold that plaintiff is entitled for proposed amendment and chamber summons deserves to be

allowed. Hence, I pass following order:

- ORDER -

- 1. Chamber Summons No. 1979 of 2019 is allowed in terms of prayer clause (a).*
- 2. Plaintiffs are permitted to carry out amendment as per schedule annexed to chamber summons within limitation.*
- 3. After carrying out amendment, amended plaint be served upon defendants.*
- 4. Chamber Summons No.1979 of 2019 is disposed off, accordingly.”*

6. In that view of the matter, the impugned order dated 02.11.2023 is not required to be interfered with and is sustained. Learned Advocate for Petitioners who are Defendant Nos.19 to 23 would submit that the Suit is not being proceeded with before the learned Trial Court at all. Hence in view of the fact that the Suit is more than 40 years old, learned Trial Court is requested by this Court to immediate take up hearing of the Suit proceedings as expeditiously as possible and determine and decide the Suit strictly in accordance with law within a period of one year from today.

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

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE
Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2024.03.11
19:23:06 +0530