

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2072 OF 2024

Nyati Realtors LLP

.. Petitioner

Versus

Kashinath Machindranath Puneekar and Anr.

.. Respondents

.....

- Mr. Saket Mone a/w. Ms. Srushti Thorat i./by Vidhi Partners, Advocates for Petitioner.
- Mr. Hemant Ghadigaonkar, Advocate for Respondents.

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 20, 2024

P.C.:

1. Heard Mr. Mone, learned Advocate for Petitioner and Mr. Ghadigaonkar, learned Advocate for Respondents.

2. The order impugned dated 03.11.2023 is passed in application filed below Exhibit-43 at Exhibit-A, page No.25 of the Writ Petition. Respondents / Plaintiffs filed the suit for seeking injunction and declaration being Regular Civil Suit No.1278 of 2015 in the year 2015. The suit is presently at the stage of Plaintiffs' witness action. However on 03.04.2023 due to an incident which occurred in October-2022, the Plaintiffs filed an application under Order VI Rule 17 of the Civil Procedure Code, 1908 (for short '**CPC**') for amendment of suit plaint.

3. By virtue of amendment, the description of original suit property described as property bearing Survey No.4/2A/2 admeasuring 18R is now changed to Survey No.4/2/2 admeasuring 18R. It is pleaded in Application seeking amendment that on 17.10.2022, some local villagers trespassed into the property and therefore Plaintiff has prayed for injunction is also sought in respect of property having Survey No.4/2/2.

4. It is Mr. Mone's contention that with respect to the transaction between Plaintiffs and Defendant i.e. Respondents and Petitioner before me, the document is executed with respect to suit property admeasuring 15R only. He would submit that the said transaction with the Petitioner is in respect of Survey No.4/2A/2 and Petitioner has no nexus whatsoever with the property bearing Survey No.4/2/2. He would submit that by virtue of allowing the amendment, the learned Trial Court has accepted the case of trespass and encroachment in respect of a different property altogether. This he would submit is contrary to not only the transaction between parties but also the basic tenets of allowing amendment under Order VI Rule 17 of the CPC as the new property now concerned is completely a different property altogether and has no nexus whatsoever with the original suit property.

5. When I asked Mr. Ghadigaonkar to explain the position he would submit that he would require to obtain instructions. There appears to be a dispute of demarcation of the property. In so far as the transaction between the Petitioner and Respondents is concerned, it is admittedly in respect of Survey No.4/2A/2 admeasuring 15R. It is a transaction dated 15.07.1991. Mr. Mone would infact submit that vendor of Petitioner has no nexus with the predecessor-in-title of the Respondents. In that view of the matter, Respondents needs to take appropriate instructions and inform the Court accordingly on the next date. Allowing amendment as applied for by the Plaintiffs nine years after filing the original suit in respect of property as described in paragraph No.2, page No.30 of the Writ Petition is clearly impermissible in law.

6. In the meanwhile, learned Trial Court shall defer the proceedings before itself tomorrow in order to enable this Court to pass appropriate orders on the next adjourned date.

7. At the request of Mr. Ghadigaonkar, stand over to **27th February, 2024** for obtaining instructions. To be placed under the caption 'for orders'.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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