

Amberkar

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

WRIT PETITION NO. 8055 OF 2024

Parshuram Manohar Randheer

Petitioner (Orig.
.. Defendant No.7)

Versus

Kamlabai Parasu Mande and Ors.

.. Respondents

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- Mr. Govind B. Pawar, Advocate for Petitioner.
 - Mr. S.C. Wakankar, Advocate for Respondent No.1.
 - Mr. P.G. Sawant, AGP for Respondent Nos.2, 3 and 7 – State.
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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 12, 2024.

P.C.:

1. Heard Mr. Pawar, learned Advocate for Petitioner; Mr. S.C. Wakankar, learned Advocate for Respondent No.1 and Mr. Sawant, learned AGP for Respondent Nos.2, 3 and 7 – State.

2. By virtue of the impugned order dated 28.03.2024 passed below Exh. 120, the learned Trial Court has rejected the Application filed by Defendant No. 7 (Petitioner herein) for framing of an additional Issue under O. XIV, R. 5 of the CPC. Primary objection to the said Application is that the said Application has been filed by Defendant No. 7 for framing of additional issue at the time of final arguments after entire witness action of all parties is over.

3. Mr. Pawar would contend that it is the right of the parties to a

litigation to file Application for framing of additional issue at any stage of the proceedings and therefore in the facts of the present case, the said Application ought to have been considered.

4. Present Suit is filed by Plaintiffs for declaratory reliefs. Pleadings of parties were completed prior to 2015. Issues were framed on two occasions i.e. on 03.08.2015 and 16.11.2017. Once issues are framed, parties are required to lead evidence on the basis of the said issues. Parties led their respective evidence and witness action is fully completed. Final arguments are pending. Only at the time of final arguments, Defendant No. 7 filed Application below Exh. 120 seeking to frame two additional issues. Application is appended at page Nos. 58-61 of the Petition. By virtue of the said Application, Defendant No. 7 desired to frame two additional issue requiring the Plaintiff to prove that he is in possession of the suit property and whether the Suit is bad for non-joinder and misjoinder of necessary parties. Cause of action for filing the Application is in view of averments made in the written statement filed by Defendant No. 4 in the suit proceedings. It is crucial to note that the written statement of Defendant No. 4 was filed prior to 03.08.2015 and Defendant No. 7 could have prayed for framing of the said issues earlier. Delay is writ large on the face of record. There is no due diligence at all. Mr. Pawar would submit that Defendant No. 7 while preparing for the final arguments in the case realized that it is Plaintiff's case in the Suit that Suit property is in his possession and he

has therefore sought injunction against the Defendants. However in the written statement filed by Defendant No. 7, it is Defendant's case that Suit property is in his possession. Mr. Pawar would next submit that Defendant No. 7 filed Application under O. VI, R. 17 of the CPC below Exh. 81 seeking amendment to the written statement. He would submit that said Application was allowed by order dated 31.03.2022 and hence the Society whose reference is made in Exh. 81 is a proper and necessary party to the Suit. *Prima facie* when the order dated 31.03.2022 is read, it is seen that the learned Trial Court has returned a categorical finding in paragraph No. 5 of the said order and dismissed the said Application filed below Exh. 81 on the ground of delay and laches. Hence Mr. Pawar is clearly wrong in making his submission. While doing so, the case of Defendant No. 7 has been considered by the Trial Court but it is opined by the Court that the amendment ought to have been sought by Defendant No. 7 at an appropriate time as Defendant No. 7 had knowledge about the same much earlier and therefore bringing an amendment at such a late stage when the matter is posted for final arguments cannot be allowed. I have also perused the order dated 31.03.2022 which is appended at page Nos. 82-85 of the Petition which dismissed the Application below Exh. 81. In view of the dismissal of the said Application below Exh. 81, Defendant No. 7 cannot rely on the said order or any observations made in the said order by the learned Trial Court for seeking

amendment. Mr. Pawar would submit that Application below Exh. 81 was ultimately allowed by the learned Trial Court by directing Defendant No. 7 to pay costs of Rs. 1000/- to the Plaintiff which has been paid over to the Plaintiff. In that view of the matter, Mr. Pawar would submit that once the Application stood allowed, then the Court should take cognizance of what is stated in the order and permit framing of additional issues.

5. Learned Trial Court after considering the Application filed by Defendant No. 7 has stated that the Application is motivated on the basis of averments made by Defendant No. 4 in its written statement in the Suit proceedings. Learned Trial Court has held in the impugned order that while determining Application below Exh. 120 as per Plaintiff's contention in the Suit plaint, Plaintiff states that he is in possession of the Suit property whereas it is seen that the Suit property is transferred illegally in the name of Defendant No. 7. In that view of the matter, learned Trial Court has held that under these circumstances, there is no reason to prove the issue of possession or whether the Defendant No. 7 is in possession or otherwise. Learned Trial Court has held that the second additional issue proposed by Defendant No. 7 pertaining to non-joinder and misjoinder of necessary parties cannot be accepted since the same is purely based on pleadings of Defendant No. 4 in its written statement and it is not the case of Defendant No. 7 in his own written statement. Learned Trial Court

clearly holds that merely replacing the Board of Directors of Defendant No. 4 by the Liquidator of the Society will not make any difference to the Suit proceedings since recording of evidence in respect of all parties is completed and the matter is being heard for final arguments.

6. In view of the above, I do not find any merit in the submissions made on behalf of Defendant No. 7 seeking framing of additional issues at this stage of the Suit proceedings and it is completely irrelevant. Order dated 28.03.2024 clearly takes into account the facts and circumstances of the present case and more importantly the fact that Suit is posted for final arguments.

7. In view of the above observations and findings, order dated 28.03.2024 is sustained and upheld. Resultantly, learned Trial Court is directed to determine RCS No.234/2013 as expeditiously as possible and in any event within a period of four months from today after hearing all parties to the Suit proceedings strictly in accordance with law. All contentions of parties are expressly kept open.

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

[MILIND N. JADHAV, J.]

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signed by
RAVINDRA
MOHAN
AMBERKAR
Date:
2024.08.19
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