



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9557 OF 2014

Vijaykumar Nagnathappa Kudumbale
VERSUS
Ashok Shivbasappa Sorde And Others

- Mr. T. M. Venjane, Advocate for the Petitioner
- Mr. S. S. Bora, Advocate for the Respondent Nos. 1 and 2

CORAM : R. M. JOSHI, J
DATE : AUGUST 21, 2025

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to the order passed below Exhibit 72 dated 19.09.2014 rejecting application for amendment to the plaint under Order VI, Rule 17 of the Code of Civil Procedure.

3. Plaintiff filed suit for redemption of mortgage. It is pleaded therein that Plaintiff is in possession of suit property. Defendant filed written statement. After framing of the issues, Plaintiff examined himself. After commencement of the trial, Application Exh. 72 filed for amendment to the plaint

and following amendment is sought to be incorporated in the plaint:

"The plaintiff rented suit property to Rasulsaheb Shbaikh on 6/5/1998. There is rent agreement in between plaintiff and Rasulsaheb. Since then sit property is in the possession of Rasulsaheb being tenant of plaintiff. Subsequent Rasulsaheb died then rent agreement continued with his son Babu s/o Rasulsaheb Shaikh, as such rent agreement executed on 11/3/2013. Therefore suit property is in the possession of tenant on behalf of plaintiff. There is no dispute between plaintiff with tenant. So conditional sale deed in favour of defendant Ashok is without possession irrespective of showing possession in sale deed."

This Application came to be rejected by passing order impugned. Hence, this Petition.

4. Learned Counsel for the Petitioner/Plaintiff submits that if amendment is allowed, nature of the suit is not likely to be changed nor any prejudice would cause to the Defendant. It is his submission that amendment is in consonance with the pleadings taken in the plaint with regard to the possession of Plaintiff over the suit property. He further submits that order impugned came to be passed without hearing Advocate for

the Plaintiff and hence, on that ground, it deserves to be set aside.

5. Learned Counsel for the Respondents opposes the Petition on the ground that the Plaintiff has failed to show due diligence as required by proviso to Order VI, Rule 17 of CPC and hence, there is no reason to cause interference therein.

6. There is no doubt about the fact that the Counsel for Plaintiff was absent when the order in question was passed. It is however necessary to consider as to whether the Trial Court has taken into account the application and all attending circumstances. Perusal of the impugned order indicates that the Trial Court has taken into account the plaint, pleadings therein and the amendment sought thereto. It is specifically observed that the facts sought to be brought on record by way of amendment were within the knowledge of the Plaintiff and the Plaintiff has not shown any reason for not pleading the same at the earlier stage. There is specific observation that no due diligence is shown by the Plaintiff.

7. Proviso to Order VI, Rule 17 of CPC mandates party to show due diligence if the amendment is sought after the commencement of the trial. Here, admittedly, trial has commenced. There is not a whisper in the Application as to the reason for which these facts were not pleaded on earlier point of time. Apart from this, perusal of the plaint indicates that it is Plaintiff's case all throughout that he is in possession of the suit property. As such, refusal of the amendment will not cause prejudice to the Plaintiff. Moreover, no prejudice is caused to the Plaintiff by absence of his Advocate.

8. As a result of above discussion, there is not merit in the Petition. Accordingly, Petition stands dismissed.

(R. M. JOSHI, J.)