



Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3214 OF 2024

Ashok Balu Hore

...Petitioner

Versus

Bhupal Neminath Navale

...Respondent

Mr Bhushan Walimbe, for the Petitioner.

CORAM M.S. Sonak, J.**DATED: 27 September 2024****PC:-**

1. Heard Mr Bhushan Walimbe for the petitioner.
2. On 1 July 2024, this Court (Coram : Milind N. Jadhav, J.) made the following order:-

“1. Heard Mr. Walimbe, learned Advocate for Petitioner.

2. Present Writ Petition takes exception to the impugned order passed below Exhibit “60” in Regular Civil Suit No.306 of 2019 appended at page No.72 of the Writ Petition.

3. The facts in the present Writ Petition are extremely gross and are therefore required to be considered.

4. Mr. Walimbe, learned Advocate for Petitioner – Plaintiff would inform the Court that Suit was filed seeking specific performance of Agreement dated 29.03.2008 under which the land was agreed to be sold. Defendant is the sole Respondent in the present Writ Petition. He would submit that under the said Agreement, it was agreed that 8.5 R.

land which is the subject matter of Agreement shall be sold to the Plaintiff and possession was handed over to the Plaintiff on that date itself. This was in view of the fact that Plaintiff had paid an amount of Rs.3,10,000/- amounting to almost 90% of the sale consideration to the Defendant.

5. After the Suit was filed in the year 2019, Exhibit “5” was allowed in favour of Plaintiff on 19.05.2020 thereby restraining Defendant from obstructing and disturbing the possession of the Plaintiff.

6. Mr. Walimbe candidly informs the Court that just before the injunction order came to be passed, Defendant created third party right in the Suit property by gifting the said property to his own son by registered gift deed dated 07.06.2019 and also simultaneously in 2020 sold the Suit property by a fresh sale deed to another third party namely ‘Julekha Kazi’.

7. He would submit that in view of the injunction order and the aforesaid development, Petitioner – Plaintiff filed Application below Order VI Rule 17 of the Code of Civil Procedure, 1908 for placing on record the details of subsequent incidents affecting the Suit property as also the Suit proceedings on record. He has drawn my attention to the impugned order dated 05.11.2022 which is appended at page No.72 of the Writ Petition and would contend that the only premise on which the said order has been passed while rejecting the Application is that it would complicate the nature of the Suit proceedings.

8. I have perused the impugned order. An arguable case has been made out by Mr. Walimbe for issuance of notice and immediate stay of the impugned order dated 05.11.2022.

9. Hence, issue notice to the Respondent. Humdast permitted.

10. In addition to Court notice, Petitioner is permitted to serve a copy of the Writ Petition and this order on the Respondent and inform him about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

11. After receiving notice, Respondent is directed to take cognizance of this order and file their Affidavit-in-Reply on or before the next date, if so desired.

12. It is clarified that, this Writ Petition shall be disposed of on the next adjourned date at the stage of admission itself after hearing the parties.

13. Respondent is directed to remain present in Court on the next adjourned date either by himself or through Advocate.

14. In the meanwhile, the proceedings before the learned Trial Court shall stand stayed until the present Writ Petition is determined by this Court.

15. Stand over to 22nd July, 2024.”

3. Mr Walimbe states that private service is effected upon the respondent, and the affidavit of service is also filed. He states that the court process/notice has even been posted on the door of the house where the respondent resides.

4. This petition challenges the order dated 5 November 2022, by which the learned Trial Judge rejected the petitioner’s application for amendment of the plaint on the ground that such amendment if allowed, would increase the complications in the matter.

5. The petitioner/plaintiff instituted a suit for specific performance and sought a temporary injunction. It is the petitioner's case that despite the grant of such injunction, the defendant constructed the property, which is the subject matter of the suit and gifted the property to his son. His son, in turn, sold the property to one ‘Julekha Kazi’. Mr Walimbe stated that the amendment was only for the purposes of bringing the above facts on record and to implead the defendant’s son and said Julekha Kazi was the defendant in

the suit. The amendment also seeks a prayer for a mandatory injunction to remove the encroachments on the property, which is the subject matter of the suit.

6. The amendment should have been allowed. There is no question of rejecting it because it would increase the complication in the matter. In the first place, the amendment seeks to record developments subsequent to the institution of the suit. Secondly, the amendment will reduce the multiplicity of proceedings. Thirdly, such an amendment is necessary to determine the real and complete issues between the parties. Fourthly, the amendment, if allowed, would reduce multiplicity. All these are valid considerations, and the amendment should not have been refused, citing the possibility of complicating the case.

7. The petitioner instituted the suit for specific performance. The defendant's son and Julekha Kazi are transferees *pendent lite*. Therefore, though it may not be mandatory for the petitioner to implead them, nothing prevents the petitioner from impleading them as proper parties. Their presence would prevent multiplicity. Although the law may not allow too many defences to a transferee *pendente lite*, several frivolous defences are invariably raised by instituting multiple proceedings, mainly to obtain undue advantage from the pressure on the Court's docket.

8. In **Sampath Kumar Vs. Ayyakannu And Another**¹, the Hon'ble Supreme Court has explained that the amendment seeking to introduce a cause of action that arose during the

¹ (2002) 7 SCC 559

suit's pendency should be allowed. This is mainly to avoid the multiplicity of the proceedings. In the present case, it is not as if a fresh cause of action has accrued. Only subsequent events that have a bearing on the matter are sought to be introduced.

9. Recently, in **Dinesh Goyal v. Pappu**², the Hon'ble Supreme Court explained the principles for allowing or disallowing amendments. Some general principles were also listed. The Court held that a hyper-technical approach should be avoided, and ordinarily, the approach must be liberal, especially when costs can compensate the opposite party. The crucial test is the necessity of the amendment to determine the real issues between the parties and prevent multiplicity. Applying the detailed principles listed and explained in this decision, the amendment needs to be allowed.

10. The impugned order is set aside for the above reasons, and the petitioner's application at Exhibit 60 is allowed. The Trial Judge should fix a time limit within which such amendments are to be carried out, and the petitioner shall do so within such time limit.

11. This petition is disposed of in the above terms without any orders for costs.

12. All concerned must act on an authenticated copy of this order.

(M.S. Sonak, J)

²

2024 Live Law (SC) 739