
(1993) 03 BOM CK 0014

In the Bombay High Court

Case No : Civil Revision Application No. 594 of 1992

Machhindra Kundalik Nale and Others

APPELLANT

Vs

Vithal Sendu Lokhande

RESPONDENT

Date of Decision : 12-03-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (1993) 95 BOMLR 352

Hon'ble Judges : M.G. Chaudhari, J

Bench : Single Bench

Judgement

M.G. Chaudhari, J.—The respondent has filed regular Civil Suit No. 115 of 1985 against the petitioners which is pending in the Court of learned Civil Judge, Junior Division, Barshi. The suit is for specific performance of the Agreement for sale of the suit property allegedly executed between the parties on 17-6-1981. The plaintiff has also sought relief of possession and other reliefs incidental to specific performance. The suit was filed on 13-3-1985.

2. The petitioners-defendants filed their written statement on 19-2-1986 inter alia raising the contentions that no Agreement for Sale was executed as alleged, that Defendant No. 1 Machhindra was addicted to vices and there was neither any legal necessity nor any other compelling reason for him to have executed an Agreement for Sale and that therefore the plaintiff was not entitled to the reliefs claimed in the suit. Other contentions were also raised which are not necessary to be set out here. The substance of the written statement being that the transaction was denied. It is pertinent to note that Defendant Nos. 2 and 3 were minors and their mother had declared the written statement as a guardian of the minors along with Defendant No. 1. The suit relates to a piece of agricultural land. On 16-1-1981, the petitioner i.e. defendants presented an application. Exh. 27 under Order VI, Rule 17, C.P.C. for amending the written statement and thereby to introduce a contention that the real transaction between the parties was a money lending transaction and the suit Agreement for Sale was executed

nominally by way of security without any consideration therefore and in connection with previous money lending transactions between the parties. The purport of the plea was that there was no Agreement to Sell the land to the plaintiff.

3. The application was resisted by the respondent-plaintiff.

4. The learned trial Judge rejected the application by order, dated 28.8.1992. That order is the subject-matter of this revision application preferred by the original defendants. I have fully heard Mr. Jamdar for the petitioners and Mr. Palekar for the respondent, Mr. Jamdar submitted that the reasons given by the learned trial Judge for rejecting the application-are erroneous. Mr. Palekar on the other hand strongly supported the order and submitted that the application has been rightly rejected.

5. The reasons given by the learned trial Judge are that firstly the application suffered from laches as it was being made after about 7 years after filing the original statement, that the proposed amendment seeks to introduce a new plea inconsistent with the pleas raised in the original written statement, that although such an inconsistent plea can be taken it should have been taken in the original written statement and that the amendment cannot be allowed for filling in the gaps in the pleadings. A reading of the order indicates that the only ground that prevailed with the learned trial Judge was the delay in making the application. I find that this approach is not correct in law. It is well settled that an amendment can be allowed at any stage of the suit provided it is necessary for the purpose of determining the real questions in controversy between the parties. When one has regard to the original written statement and its tenor it cannot be said that the Proposed amendment would introduced an entirely a new case. The purport of both the pleadings is being to deny the transaction of Agreement for Sale. The suit itself is at a stage where it can be proceeded with without undue delay even after the amendment is allowed. I am, therefore, inclined to allow the proposed amendment making it clear that it will be without prejudice to the rights and contentions of the defendants to be raised in the suit in respect of the amended pleadings including the grounds that were raised in their reply to the application, Exh. 27.

6. In the result, the impugned order, dated, 28-8-1992 is set aside and the application of the petitioners-defendants, Exh. 27 for amendment of the written statement is allowed. The petitioners shall carry out the amendments within 4 weeks from today and serve the amended written statement on the plaintiff-respondent immediately thereafter. The suit be placed before the learned trial Judge for compliance with these directions by the parties and for further directions in the suit on 12th April, 1993. Rule made absolute. Petitioners to pay costs of the respondent.

P.C.: Writ to be communicated immediately. Certified copy expedited.