

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 1863 OF 2015
WITH
WRIT PETITION NO. 689 OF 2015**

Kachrabai Kashinath Rithe

..PETITIONER

VERSUS

Apparao Ravan Bhawle and Another

..RESPONDENTS

....

Mr. B.A. Dhengle, Advocate holding for Mr. S.D. Ghayal, Advocate
for petitioner.

Mr. M.M. Joshi, Advocate for Respondent Nos.1 and 2.

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CORAM : N.W. SAMBRE, J.

DATED : 27th NOVEMBER, 2015

ORAL ORDER :

The petitioner filed a Regular Civil Suit No. 1138/2008 for perpetual injunction. Kashinath, the husband of the petitioner is alleged to have another wife by the same name as that of petitioner and it is claimed that taking advantage of the similar name as that of petitioner, the first wife transferred the suit property to Defendant No.1-Apparao, who happened to be her real brother.

2. In the suit, the issues are framed and the petitioner/plaintiff thereafter, moved an application for amendment, seeking to challenge to the alleged sale deed in favour of Defendant No.1 by Kacharabai. An application was also moved for adding Kacharabai as party defendant in the suit.

3. Both these applications i.e. for amendment and addition of defendant are rejected by the Court below. As such, present petitions.

4. The learned Counsel appearing on behalf of the petitioner would urge that since the suit is at initial stage of trial, the applications ought to have been granted, in the interest of justice and by putting the petitioner to certain terms. If the applications are granted, no prejudice will be caused to the other side. According to him, in absence of challenge to the sale deed in question, as is sought by way of amendment, the decree as is prayed originally will be a paper decree and will be of hardly any assistance to the petitioner.

5. According to him, both the petitions, as such, need to be allowed.

6. Learned Counsel for the respondents would urge that, the fact about execution of the sale deed in favour of Defendant No.1 was well within the knowledge of petitioner/plaintiff at the time of filing of suit and by way of amendment, the petitioner/plaintiff has sought to change entire nature of the suit. He would then submit that the learned Court below has rightly rejected the applications for amendment and addition of parties.

7. Having bestowed my anxious consideration to the submissions made, it is required to be noted that initially, the suit that was filed was only for injunction, in which prayer for declaration is sought to be inserted. The pleadings for seeking such declaration will altogether different than the one which are pleaded, including that of the nature of claim. The fact that the said aspect was well within the knowledge of the petitioner is aparant from the pleadings raised in the plaint, particularly in

paragraph nos.5 and 9 of the plaint. No reasonable explanation is coming forward as to why the said plea is not raised at the time when the suit was filed. From the conduct of the petitioner, it could be inferred that the petitioner intend to carry out the amendment by way of afterthought.

8. In view thereof, in my opinion, orders rejecting the prayers for amendment in the plaint and addition of party do not call for any interference in the extra ordinary jurisdiction of this Court. Thus, the petitions fail and stand dismissed with no order as to costs.

(N.W. SAMBRE, J.)