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

WRIT PETITION NO.8842 OF 2015

- 1 Savitrabai W/o. Dnyandeo Kadam
Age : 58 years, Occu : Household
- 2 Rakmhabai W/o. Asaram Kadam,
Age : 48 years, Occc Household,
Both R/o Khunegaon, Tq. Newasa,
Dist. Ahmednagar
Through their Power of Attorney Holder,
Dnyandeo S/o. Punja Kadam,
Age : 52 years, Occ. : Agri.
R/o. Khunegaon, Tq. Newasa,
Dist. Ahmednagar.

...Petitioners

Versus

- 1 Shankar S/o. Bhaurao Kadam,
Age : 39 years, Occ. Agri.
R/o. Bhanas Hivra, Tq. Newasa,
Dist. Ahmednagar.
- 2 Yellabai W/o. Bhaurao Kadam,
Since deceased through L.Rs.
- 2-a Nirmala Suresh Shinde,
Age : 40 years, Occ. : Household
R/o. House No. 165, Sai De marks,
Mumbai.
- 2-b Sharda Kisan Mhaske,
Age : 42 years, Occ. : Household
R/o. Bhans Hivra, Tq. Newasa,
Dist. Ahmednagar.
- 2-c Lata Rohidas Barde,
Since deceased
Through her legal heirs

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- 2c-a Anita Uddhavrao Kale
Age : Major, Occ. : Agri,
R/o. Bhagatsingh Park, Shevgaon,
Tq. Shevgaon, Dist. Ahmednagar.
- 2c-b Anand Rohidas Barde,
Age : Major, occ. : Agri.
R/o. Bhanas Hivra, Tq. Newasa,
Dist. Ahmednagar.
- 2c-c Bhagyashree Amol Warpe,
Age : Major, Occu. : Household,
R/o. Warje, Pune, Near Maliwada,
Tq. & Dist. Pune.
- 3 Bhagubai W/o. Shankar Navle,
Age : 46 years, Occ. : Agri.
R/o Bhanas Hivra, Tq. Newasa,
Dist. Ahmednagar.

...Respondents

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Mr. Rahul R. Karpe, Advocate for Petitioners
Mr. D. V. Nagude, Advocate for Respondent no.1

CORAM : N.W. SAMBRE, J.**DATE : 23rd November, 2015****ORAL ORDER :**

In Regular Civil Suit No.143 of 2001, preferred by respondent no.1 herein, a prayer for declaration of the sale deed as bogus, was made. It is further claimed that the sale deed is not binding on respondent no.1-plaintiff, which was executed in between defendants no.1 & 2 to the said suit, i.e. between respondents no.2 and 3 herein.

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2. An injunction is sought from interfering with the possession of the plaintiff, i.e. respondent no.1 herein.

3. After the suit came to be dismissed, an appeal bearing Regular Civil Appeal No.11 of 2014, was filed. In the said appeal, Exh.51 - an application for amendment of plaint was moved, whereby the plaintiffs sought an amendment that in the prayer clause, prayer for partition and possession was sought to be incorporated.

4. The learned appellate court allowed application Exh.51, vide order dated 12th August, 2015. Thus, the present petition by defendants no.3 and 4.

5. Mr Karpe, learned Counsel appearing on behalf of the petitioners, would urge that the order impugned is not sustainable, on the grounds; (a) that it is non-speaking order and (b) the prayer for amendment if brought into, changes the entire nature of the suit and the prayer for amendment is intended, with an object to achieve the order of remand from the appellate court. He would urge that prayer for partition, possession and addition of defendant is sought by amendment to a suit for declaration and injunction.

6. Learned Counsel appearing on behalf of respondent no.1, while supporting the order impugned, would urge that the situation as is prevailed on the date of moving such an application prompts respondent no.1 to move such application. He would then urge that grant of

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amendment would not change the nature of the plaint, as the claim was for injunction and declaration that the sale deed was null and void and not binding on respondent no.1.

7. According to the learned Counsel, grant of amendment is already given effect to and as such, the petition is rendered infructuous.

8. Having bestowed my anxious thought over the submissions, it is noted that after the order dated 12th August, 2015 was passed by the Trial Court granting the amendment, the petition came to be filed before this Court on 25th August, 2015, i.e. within reasonable time. It is also not in dispute that the matter thereafter was heard by this Court and was adjourned.

9. It is during this period, respondent no.1 has carried out the amendment, pursuant to a non-speaking order, as the reasons are absent in the order passed by the learned Trial Court. The reasons establish a live link between application of mind and the cause that was espoused, which are absent in the impugned order. Apart from the above fact, it is noted that originally the suit is for injunction and declaration, which suffered dismissal and subsequent thereto, at the appellate stage, an amendment is sought to be incorporated for partition and separate possession. In my opinion, the said prayer changes entire nature of the suit, particularly having regard to the fact that the said prayer though was available to the

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respondent no.1 at the time of filing of the suit, was not made. Thus, in my opinion, the order impugned is not sustainable.

10. In the result, the order dated 12th August, 2015, passed by Additional District Judge, Newasa, below Exh.51, in Regular Civil Appeal No.11 of 2014, is hereby quashed and set aside.

The application Exh.51, in Regular Civil Appeal No.11 of 2014, stands rejected.

Writ Petition stands allowed in above terms with no order as to costs.

(N.W. SAMBRE, J.)

amj