

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.388 OF 2015

Smt. Padma Vijay Parekh

.. Petitioner

Versus

Rahul Ravishankar Shinde and others

.. Respondents

Mr. M. M. Sathaye, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 1st OCTOBER, 2015

PC.

1. At the outset, the Learned Counsel for the Petitioner states that he would comply with the order dated 10.09.2015 during the course of the day.

2. The Writ Jurisdiction of this Court is invoked against the order dated 05.03.2014 passed by the Learned Adhoc District Judge & Additional Sessions Judge-3, Nashik, by which order the application Exh.81 filed by the Respondent Nos.11 and 12 in the Appeal in question being Regular Civil Appeal No.40 of 2000 for transposing them as Plaintiffs came to be rejected. However, the above Petition has been filed by the original Respondent No.12 only. The Appeal in question i.e. Regular Civil Appeal No.40 of 2000 was arising out of the decree passed in Special

Civil Suit No.222 of 1986 which suit was decreed by the Trial Court i.e. Learned Civil Judge Senior Division, Nashik by the judgment and order dated 19.12.1999. In the said Appeal a pursis came to be filed which was numbered as Exh.80 by the Appellants and in the said pursis it was stated that the Appellants are not desirous of proceeding with the Appeal in view of the settlement arrived at between the parties. In view of the said pursis Exh.80, the Petitioners i.e. Respondent No.11 and 12 filed Exh.81 for their transposition as Plaintiffs in the suit in question. At this stage, it is required to be noted that the order allowing the Petitioners impleadment as Respondent Nos.11 and 12 to the Appeal in question came to be challenged in this Court by way of Writ Petition No.8256 of 2011. The said challenge was revolving around the connection of the Respondent Nos.11 and 12 to the family of the Plaintiffs and the Defendants. The said Writ Petition came to be disposed of by a Learned Single Judge of this Court by order dated 23.10.2012 and in the context of the present Petition the operative part of the order assumes some significance and therefore is reproduced hereinunder for the sake of ready reference :-

“i) The learned District Judge at Nashik, before whom Civil Appeal No.40 of 2009 is pending shall hear and dispose of the appeal without getting influenced by the observations made by him in para 4 of impugned order below Exhibit 61 where he has observed that the present respondent nos.11 to 13 and Nanda are heirs of Ramchandra.

ii) If the present respondent nos.11 to 13 are required to

make out a case in their favour, they shall do so independent of this observation. All questions in that behalf are kept open.

iii) At the hearing of the appeal if the present respondent nos.11 to 13 wish to place on record certain additional documents to show that they are concerned with the properties in question or they are related to the persons who are the parties to the suit, they are free to do so. That application shall be decided on merits.

iv) Petition is accordingly disposed of with no order as to costs.”

3. The application Exh.81 filed by the original Respondent Nos.11 and 12 to the Regular Civil Appeal No.40 of 2000 was founded on the directions as contained in the operative part of the order of the Learned Single Judge which has been reproduced hereinabove. It was therefore the case of the Respondent Nos.11 and 12 that they are entitled to produce evidence on record to show that they are concerned with the properties and are related to the persons who are parties to the suit. It was also the contention of the Petitioner and Respondent No.14, the suit being one for partition all the parties to the suit partake the character of Plaintiffs and therefore, the Petitioner and the Respondent No.14 should be transposed as Plaintiffs. The application Exh.81 was replied to on behalf of the Appellants and was opposed by the Appellants. It was contended on behalf of the Appellants that the Respondent Nos.11 and 12 have not adduced any evidence at the trial that they have not filed any Appeal against the decree and therefore cannot be said to be aggrieved

persons. The Lower Appellate Court i.e. Adhoc District Judge & Additional Sessions Judge-3, Nashik, considered the said application and has by the impugned order dated 05.03.2014 rejected the same. It is required to be noted that by an order passed on the same day i.e. 05.03.2014 the Learned Judge has allowed the pursis Exh.81 filed by the Appellants and permitted the withdrawal of the Appeal and disposed of the Appeal for want of prosecution. The application Exh.81 has been rejected on the ground that permitting the applicants i.e. Respondent Nos.11 and 12 to agitate their case would widen the scope of the Appeal. The Lower Appellate Court was of the view that in terms of the directions issued by a Learned Single Judge of this Court the Respondent Nos.11 and 12 have to make out case in their favour for which they have another recourse. The Learned Judge thereafter has reiterated that it would not be proper to transpose the Respondent Nos.11 and 12 as they have to establish their right even as per the order passed by this Court and that various issues relating to the existence of their right, claim, limitation, share, court fees cannot be taken into consideration in the Appeal. The Lower Appellate Court reiterated that the Respondent Nos.11 and 12 have another recourse meaning thereby that they can file independent proceedings. As indicated above, the Lower Appellate Court has rejected the application Exh.81 filed by the said Respondent Nos.11 and 12 amongst whom is the Petitioner

herein. The main thrust of the submissions of the Learned Counsel for the Petitioner was on the basis that the impugned order dated 05.03.2014 would come in the way of the Petitioner i.e. the Respondent Nos.12 from agitating his grievance/claim in independent proceedings. The Learned Counsel also sought to contend that since the suit as originally filed one for partition the Respondent Nos.11 and 12 ought to have been transposed as Plaintiffs. In my view, in so far as the apprehension expressed by the Learned Counsel for the Petitioner is concerned, in the light of the observations made by the Lower Appellate Court in the impugned order dated 05.03.2014, wherein the Lower Appellate Court in terms observed that the said Respondents “**have another recourse**” and would undoubtedly be entitled to file independent proceedings and the impugned order dated 05.03.2014 cannot come in their case from prosecuting such proceedings. In so far as the claim of the Respondent Nos.11 and 12 for transposition as Plaintiffs is concerned, in my view, the reason given by the Trial Court for rejecting the application for transposition cannot be found fault with. Hence, by issuing the clarification as above namely that the impugned order dated 05.03.2014 would not come in the way of the Respondent Nos.11 and 12 i.e. the Petitioner and the Respondent No.14 herein from prosecuting any independent proceedings and that any independent proceedings filed by

the said Respondent Nos.11 and 12 would be tried on their own merits and in accordance with law. The above Writ Petition is disposed of.

[R.M. SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.