

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

WRIT PETITION NO.2845 OF 2014

**Shri. Mohan Jeevatram Karamchandani,
Hindu, Adult, aged about 56 years,
occupation Business,
R/o:102 Ganpati Plaza, Near Chopra
Court, Ulhasnagar 3**

.. Petitioner

Versus

**1. Ms. Shashikala Devidas Lala,
Hindu, Adult,
residing at Nikita Palace, Hill Area,
Ulhasnagar 3**

**2. Shri. Anil Arjandas Ballani,
Hindu adult occupation Business,
residing a Jethanand Apartment,
near J.M.F.C. Ulhasnagar 3**

**3. Shri. Mohan Makhija,
Hindu adult, Occupation Business,
residing at Jethanand Apartment,
Near UMC, Ulhasnagar 3**

**4. Shri. Deepak Budhwani,
Hindu adult, residing at**

.. Respondents

Mr. Jaiwant S. Chandnani, Advocate for the Petitioner.

Mr. P. R. Arjunwadkar, Advocate for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 05th JANUARY, 2015

ORAL JUDGMENT

1. Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2. The writ jurisdiction of this Court is invoked against the order dated 02.12.2013 passed by the learned 3rd Joint Civil Judge, Senior Division, Kalyan by which order the application being Exh.56 filed by the Petitioner/ original Plaintiff for amendment of the plaint so as to seek incorporation of paragraph Nos.10(a) to 10(k) which are part of the Application Exh.56 came to be rejected. The said rejection is on the ground that the Petitioner wants to bring on record the orders passed by various forums as also this Court and since the Petitioner can produce certified copies of the said orders, the amendments are not necessary. The application is also rejected on the ground that the trial in the suit has commenced.

3. It is required to be noted that the suit in question has been filed by the Plaintiff for declaration an injunction. The declaration is as regards

ownership which is sought of City Survey Chalata No.180 and 181, Sheet No.51 admeasuring 451.40 sq.mt. Adjoining Block No.C-31, Room No.115, Ulhasnagar. The cause for filing the application was the outcome of the Appeal which was filed before the Hon'ble Minister for Revenue who had set aside the order passed in Appeal No.72 of 1990 which order was challenged by the Petitioner by filing Writ Petition No.926 of 2013 which came to be partly allowed. A perusal of the amendment sought vide paragraph Nos.10(a) to 10(k) discloses that the Petitioner wants to refer to the proceedings which have taken place before the Consolidation Officer as also the Revenue proceedings which were agitated right up to this Court. The suit is at the stage where only the issues are framed and the affidavit of evidence on behalf of the Plaintiff is yet to be filed. Hence, in terms of the law laid down by the Apex Court as well as this court, since the affidavit of evidence has not been filed, the trial cannot be said to have been commenced. Hence, in so far as the said ground which has been held against the Petitioner for rejection of the application filed by him, the same is unsustainable. In so far as other grounds on which the application is rejected namely that the amendments are not necessary and that the Petitioner can produce the certified copies of the orders passed by the various authorities as well as by this Court in the suit. In my view, having regard to the fact that in the absence of pleadings, no evidence can be led,

the said reasoning of the Trial court cannot be accepted. Since the Petitioner is referring to the proceedings which have taken place before the various authorities as well as the orders passed therein which include the orders passed by this Court, the Petitioner would be entitled to amend the plaint in terms of the amendment sought in paragraph Nos.10(a) to 10(k) as contained in the said application Exh.56. Though the petition is seriously opposed on behalf of the Respondents/Defendants, in fact allowing the amendment at the stage at which the suit is at present, would cause no prejudice to the Defendants as the Defendants would be entitled to file their additional written statement to the amended plaint. Hence, by leaving the issue of limitation open in respect of the amendments sought the impugned order is required to be quashed and set aside and is accordingly quashed and set aside. Resultantly, the application Exh.56 would stand allowed. The Petitioner/original Plaintiff to carry out amendment in the plaint within four weeks from date and furnish amended copy to the other side after amendments are carried out. The Defendants would be entitled to file their additional written statement, if so advised within the time stipulated by the Trial court. In the facts and circumstances of the case, the interest of justice would be served if the Petitioner is directed to pay costs of Rs.3000/- to the Defendants within 4 weeks. The Defendants would apportion the said costs equally amongst

themselves. The Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

[R.M. SAVANT, J]