

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

WRIT PETITION NO.1943 OF 2012

Smt. Godabai Dhondiba Kamte and ors. : Petitioners
versus
Vasant Kondiba Kamte and ors. : Respondents.

Mr. Ravi P Kadam for the Petitioners
Mr. S S Kanetkar for the Respondent Nos.1 to 6.

CORAM : R. M. SAVANT, J.
DATE : 31st August 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 02/08/2011 passed by the learned 14th Joint Civil Judge, Junior Division, Pune by which order the Application (Exhibit 98) for amendment of the plaint came to be allowed and the plaint was allowed to be amended in terms of the amendment sought vide Application (Exhibit 98).

2 The suit in question has been filed for partition and declaration. The partition is sought is in respect of 1/3rd share which the Plaintiffs claim in the suit properties described in the plaint. The declaration is sought in respect of the sale deeds which have been executed by the Defendants in respect of the some of the properties in question in favour of the 3rd party. The suit properties are ancestral wherein the Plaintiffs claim the share to the extent sought in the suit.

3 It appears that prior to the instant Application (Exhibit 98), the Plaintiffs had earlier filed two Applications (Exhibit 49 and 74). However, it is an undisputed position that till the instant Application (Exhibit 98) was filed, the said Applications (Exhibits 49 and 74) were not decided and in view of the instant Application (Exhibit 98) being filed, the Plaintiffs did not press the said Applications (Exhibits 49 and 74). A reading of the amendment sought discloses that the Plaintiffs seek to give better particulars in respect of the description as well as in respect of the reliefs sought by way of declaration.

4 The Trial Court considering the nature of the amendment sought deemed it appropriate to allow the Application (Exhibit 98) and since there was some delay in moving the Application (Exhibit 98), imposed costs of Rs.1,000/- on the Plaintiffs.

5 The learned counsel appearing for the Petitioners sought to contend that the Plaintiffs by way of amendment are seeking to introduce a time barred claim as also the Plaintiffs are trying to change the cause of action. This the learned counsel sought to buttress by relying upon the averments in the original plaint and the averments which are now sought to be introduced by way of amendment.

6 In so far as the cause of action is concerned, a reading of the amendment which is sought by way of substitution of the original paragraph 14 is concerned, the same discloses that better particulars as regards the cause of action for filing suit are sought to be given. However, the original cause of action is a part of the said paragraph which is sought to be introduced. In so far as the relief sought by way of declaration and challenge to the sale deeds of 1984 and 2008 is concerned, it is required to be noted that a reference is made to the said sale deeds in paragraph 21 and what is sought to be now introduced is only the date of the said sale deeds. In my view, therefore, the contention of the learned counsel for the Petitioners cannot be accepted. The reliance placed on the Apex Court reported in (2007) 14 SCC 120 in the matter of Shiv Gopal Sah alias Shiv Gopal Sahu v/s. Sita Ram Saraugi and others wherein the Apex Court held that the time barred claim cannot be permitted to be introduced by way of amendment in the facts of the present case is misplaced. In that view of the matter, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]