

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3732 OF 2014**

Balasaheb Khandu Badade

..Petitioner

Vs.

Bharati Rajendra Jadhav & Ors.

..Respondents

Mr. S. S. Patwardhan a/w Mr. R. A. More for the Petitioner

Mr. K. U. Nikam for the Respondent Nos.1 to 12

Mr. Jayesh Kocheta a/w Ms Anjali Bhujbal for the Respondent No.14 & 15

CORAM : R. M. SAVANT, J.

DATE : 29th SEPTEMBER, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 15-1-2014 passed by the Learned 2nd Additional Judge Small Causes Court and Civil Judge Senior Division, Pune, by which order, the application Exhibit 76 filed by the Plaintiff seeking amendment of the plaint has been rejected.

2 The Suit in question has been filed for specific performance by the Petitioner / Plaintiff of the agreement entered into between the Plaintiff and the Defendant Nos.1 to 13 dated 6-5-1996. By the amendment sought, the Plaintiff sought to incorporate a challenge to the Power of Attorney and the Development Agreement executed by the Defendant Nos.1 to 13 in favour of the Defendant Nos.14 to 16. The Trial Court considered the said application

and has rejected the same on the application of Order II Rule 2 of the Civil Procedure Code. The Trial Court applied Order II Rule 2 of the CPC having regard to the pleadings which are already appearing in paragraph 9 and 10 of the plaint. It is required to be noted that in paragraph 9 the Plaintiff has averred to the following effect. The relevant excerpt is as follows :

“The Defendant Nos.14 to 16 though having knowledge of rights of plaintiff over the suit property have intentionally purchased the suit property and/or acquired development rights in respect of the suit property from the defendant Nos.1 to 13. If the defendant Nos.14 to 16 succeeds in developing and/or creating third party interest in the suit property then the plaintiff would suffer great and irreparable loss, hardships and prejudice which cannot be compensated in money.”

In paragraph 10 the Plaintiff has averred to the following effect.

The relevant excerpt is as follows:

“However the defendant Nos.1 to 13 with a malafide intention of defrauding the plaintiff have conveyed the suit property and its development rights in favour of defendant Nos.14 to 16 for higher price, are trying to avoid the performance of contract entered into between the plaintiff and defendant Nos.1 to 13.”

3 Having regard to the averments which are already appearing in the said paragraphs 9 and 10, the Trial Court held that the Plaintiff was aware of the said Power of Attorney and the Development Agreement and in spite of the same has not chosen to challenge the same. The amendment would be

barred having regard to Order II Rule 2 of the Civil Procedure Code.

4 In my view, having regard to the averments which are appearing in paragraphs 9 and 10 of the plaint as originally filed and inspite of the said averments, the Plaintiff has consciously not laid a challenge to the Power of Attorney and the Development Agreement. The Trial Court was right in coming to a conclusion that the relief claimed by the Plaintiff would be barred by virtue of Order II Rule 2 of the CPC and therefore the plaint cannot be permitted to be amended in terms of the amendment sought vide the said application Exhibit 76. In my view, having regard to the reasons mentioned in the impugned order, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed order