

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

WRIT PETITION NO.5712 OF 2015

Shri. Sadashiv Babasaheb Pawar

.. Petitioner

Versus

Smt. Draupadi Gopaldas Sakharani and another

.. Respondents

Mr. V. B. Tapkir, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 25th AUGUST, 2015

P.C.

1. The Writ Jurisdiction of this Court is invoked against the order dated 13.01.2015 passed by the Learned 3rd Joint Civil Judge, Senior Division, Pune, by which order the application Exh.43 filed by the original Plaintiffs for amendment of the plaint came to be allowed and resultantly, the plaint was permitted to be amended in terms of the amendment sought vide application Exh.43. The suit in question is filed by the Respondents/original Plaintiffs for declaration that the Development Agreement and Power of Attorney dated 25.02.2005 executed by the Plaintiffs in favour of the Defendant be declared as illegal and void and ab-initio. The amendment sought vide said application Exh.43 was to incorporate two prayer clauses in place of the original prayer clause (a). The original prayer clause (a) reads thus :-

“(a) it is to be declared that the Development Agreement and Power of Attorney dated 25.02.2005 executed by the

plaintiffs in favour of defendant and registered with Sub Registrar Haveli No.7, Pune at serial No.1741/2005 and 1742/2005 be declared as illegal void ab-initio and cancelled and not in force from 11.01.2008.”

The prayer clauses which were sought to be incorporated by way of the amendment read thus :-

“b) That the existing Prayer Clauses (2) be deleted and replaced with the following :

2. The Power of Attorney dated 25.02.2005 executed by the Plaintiffs in favour of Defendant and registered with Sub Registrar Haveli No.7 at serial No.1742 be declared as revoked lawfully and cancelled.”

c) That the existing Prayer Clauses (7) be deleted and replaced with the following :

7. It be declared that the Defendant has no right title or interest in the Suit Property described in Paragraph 1 herein above and position of the parties vis-a-vis the rights, title, interest and possession of the suit property be restored to the “Status Quo Ante” i.e. what it was before the time of execution of the Development Agreement and Power of Attorney.”

2. In so far as the first prayer is concerned, the Trial Court has observed that there are already averments in the plaint as originally filed relating to the case of the Plaintiffs of terminating and revoking the Development Agreement and the Power of Attorney on account of the breach of the terms and conditions of the Development Agreement particularly the breach in respect of the consideration payable. The Trial Court was therefore of the view what is sought to be done by the incorporation of the first prayer is merely redrafting of the said prayer

clause (a) as it originally stood and therefore, the same was permissible.

3. In so far as the second prayer is concerned, the Trial Court has held that the same also has its basis in the averments in the plaint where the Plaintiffs have referred to the symbolic possession being handed over to the Defendant meaning thereby that the said possession was handed over pursuant to the Development Agreement so as to facilitate construction and hence, the Trial Court was of the view that the second prayer could also be allowed to be incorporated by way of an amendment to the plaint. The Trial Court has observed that by incorporation of the said prayers, no prejudice would be caused to the Defendant in view of the fact that a foundation was already laid in the suit. The Trial Court has also recorded a finding that allowing the said amendment would not change the nature of the suit and that the power is required to be exercised of allowing the amendment in the larger interests of doing full and complete justice between the parties. It is well settled that an amendment which facilitates in resolving the real controversy between the parties can be allowed by the Court though the trial has begun. In my view, having regard to the reasons mentioned by the Trial Court for allowing the amendment application, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]