

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

WRIT PETITION NO.5540 OF 2013

Mrs. Manisha Vasant Bapat : Petitioner
versus
Milind Jaywant Navalkar and anr. : Respondents.

Mr. S S Kanetkar for the Petitioner.
Mr. Mayuresh Kulkarni i/by Mr. Ketan A Chothani for the Respondent
No.1.

CORAM : R. M. SAVANT, J.
DATE : 02nd February 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order date 19/3/2013 passed by the learned 4th Joint Civil Judge, Junior Division, Pune by which order the Application (Exhibit 64) filed by the Respondent – Plaintiff came to be allowed and the Plaintiff was permitted to amend the plaint in terms of the amendments sought vide the said Application (Exhibit 64).

2 The suit in question has been filed principally for a declaration that the Plaintiff is the owner of the half of the suit property and the half portion of the terrace above the suit property and the half portion of the parking under the suit property. The second relief sought which is germane to the present Petition is the direction to put the Plaintiff in possession of his half portion of the suit property by constructing a permanent wall in between the midpoint of the suit property from the Defendant No.1. The suit property is a

plot of land on which there is a constructed bungalow having a built up area of 3151 sq.ft.. The plot of land on which the bungalow is situated admeasures 5424 sq.ft. The Plaintiff therefore in the suit as originally filed has sought a declaration in respect of the half portion of the suit property. It seems that the plot in question was allotted in the joint names of the Defendant and the vendor of the Plaintiff by the Respondent No.2 Society. It is on the said basis that the Plaintiff is seeking a declaration as also the second relief which has been adverted to in the plaint. However, since the Plaintiff had not sought any relief in respect of the land which has been leased out to the Plaintiff and the Defendant No.1 by the Society, by the amendment sought the relief in respect of half portion of the leased land is now sought by the Plaintiff.

3 The Trial Court considered the said application and has by the impugned order allowed the same. The Trial Court allowed the said application on the ground that the proposed amendment is necessary for giving a quietus to the dispute between the parties. The Trial Court, in so far as issue of limitation which was raised in respect of the amendment sought is concerned, kept the said issue of limitation open.

4 The learned counsel appearing on behalf of the Petitioner Shri Kanetkar placed reliance on the judgment of the Apex Court reported in 2009 AIR (SC) 1433 in the matter of Vidyabai & ors. v/s. Padmalatha & Anr.

wherein the Apex Court held that unless the jurisdictional facts are present namely the due diligence test is satisfied by the party, an application for amendment cannot be considered. In my view, the said judgment would have no application as in the facts of the present case the amendment sought can only be said to be clarificatory in nature as in the suit as originally filed the Plaintiff has already sought a declaration in respect of the half portion of the structure and what remained was only the land on which the structure is situated. It seems that in the written statement filed by the Defendant the factum of lease in respect of the half portion being executed in favour of the Plaintiff has been referred to.

5 Be that as it may, having regard to the nature of the amendment sought, the order allowing the amendment passed by the Trial Court cannot be said to suffer from any error of jurisdiction or any other illegality or infirmity for this Court to exercise its writ jurisdiction. The above Writ Petition is accordingly dismissed.

6 At this stage, the learned counsel appearing for the Petitioner Shri Kanetkar prays for continuation of the ad-interim order which is operating in the above Petition. In the facts and circumstances of the case, the said prayer is rejected.

[R.M.SAVANT, J]