

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7832 OF 2015**

Bapu Bhiva Patil & Ors.

..Petitioners

Vs.

Shankar Ganpat Sawant & Ors.

..Respondents

Mr. Abhijit Adgule for the Petitioners

Mr. Chetan Patil for the Respondent No.2

CORAM : R. M. SAVANT, J.

DATE : 21st OCTOBER, 2015

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 25-6-2015 passed by the Learned 11th Joint Civil Judge Junior Division, Kolhapur, by which order the application Exhibit 69 for amendment of the plaint filed by the Petitioners i.e. original Plaintiffs, came to be rejected.

2 The Suit in question has been filed simplicitor for injunction restraining the Defendants from interfering with the possession of the original Plaintiff qua the suit property. At this stage, it is required to be noted that the Respondent No.2 herein who is the sister-in-law of the Respondent No.1 herein had filed Suit being Regular Civil Suit No.61 of 1968 for partition of the joint family properties belonging to the family of the Respondent Nos.1 and 2. The said Suit came to be decreed by the Trial Court by judgment and order dated 22-10-1969 and the Plaintiff therein i.e. the Respondent No.2 herein was held

entitled to 1/4th share in the suit properties amongst which is the property which the subject matter of the instant Suit. The instant Suit i.e. Suit NO.574 of 1984 was filed thereafter by the original Plaintiff one Bapu Bhiva Patil who claimed to be the tenant of the suit property which as indicated above is amongst the properties which was the subject matter of Regular Civil Suit No.61 of 1968. The Petitioners herein are the heirs of the original Plaintiff Bapu Bhiva Patil and are now the "Plaintiffs".

3 Suffice it would be to state that the instant Suit came to be decreed by the Trial Court by judgment and order dated 22-11-1994 and the injunction sought by the Petitioners/Plaintiffs came to be granted. The matter was carried in Appeal by the Respondent No.2 herein by filing Regular Civil Appeal No.337 of 1995. In view of the fact that an issue of tenancy arises in the Suit in view of the case sought to be made out by the Plaintiffs in the instant Suit. The Lower Appellate Court therefore by the judgment and order dated 5-2-2007 set aside the decree passed by the Trial Court and remanded the matter back to the Trial Court for a deonovo consideration of the Suit by framing the issue as under and directing that the said issue be referred to the authorities under the Tenancy Act.

“Does the plaintiff prove that he is tenant of the
suit land Gat No.681 situated at village Kasaba
Bawada, Tal Karveer, Dist Kolhapur as alleged ?

4 It is after the Suit came to be remanded that the instant

application for amendment of the plaint is sought which amendment is to the effect that the Petitioners / Plaintiffs have purchased the shares of the other co-owners and have therefore become owner to the extent of 3/4th portion of the land in question. What remains is only the 1/4th share claimed by the Respondent No.2 herein. The Petitioners claim to have purchased the said shares in the year 2004. The Petitioners on the said basis sought the incorporation of paragraph Nos.5A, 5B and prayer clause 9A which are mentioned in the amendment application. The said amendment application Exhibit 69 was opposed to on behalf of the Respondent No.2 i.e. the Defendant No.2 by filing her reply. It was contended on behalf of the Defendant No.2 that it is not necessary to consider the orders passed in Tenancy Case No.8 of 2001. It was also contended that though the Plaintiffs claim to have purchased the shares in the year 2004, the same was not pointed out to the Lower Appellate Court at the time when the Lower Appellate Court rendered its decision.

5 The Trial Court considered the said application and has rejected the same inter alia on the ground that though the Plaintiffs claim to have purchased the said 3/4th share in the year 2004, the said fact was not brought to the notice of the Lower Appellate Court whilst the Appeal was pending and even thereafter when the Appeal was decided in the year 2007 and that if the application is allowed the same would militate against the order passed by Lower Appellate Court remanding the matter back to the Trial Court on the

basis of the reference to be made to the tenancy authorities. As indicated above it is the said order dated 25-6-2015 which is impugned in the above Petition.

6 The Learned Counsel for the parties sought to urge contentions for and against the amendment being allowed. Whilst it was the contention of the Learned Counsel for the Petitioners i.e. the original Plaintiffs that the Plaintiffs now only seek to bring the events which have occurred post filing of the Suit on record namely that they have now become the owners of 3/4th share. It is the contention of the Learned Counsel appearing for the Respondent No.2 that the said amendment application has been filed merely to protract the proceedings as the Respondent No.2 is awaiting to enjoy the fruits of the decree passed as long as back on 22-10-1969.

7 In my view, there is no merit in the above Petition. As indicated above the amendment sought is revolving around the alleged purchase of the 3/4th share by the Plaintiffs in the suit land in the year 2004. Significantly the said fact was not brought to the notice of the Lower Appellate Court whilst the Appeal was pending or even thereafter whilst the Appeal was decided. It seems that the Plaintiffs waited for the Lower Appellate Court to decide the Appeal and in view of the fact that the issue of tenancy was directed to be framed by the Lower Appellate Court on remand, the Plaintiffs waited for the decision to be rendered in the said tenancy proceedings. It is possibly on realising that the

tenancy proceedings would go against the Plaintiffs that the Plaintiffs now chose to come out in the open with the sale deeds in respect of the 3/4th share in the land in question. The said fact is now fortified by the fact that the tenancy proceedings went against the Petitioners / Plaintiffs. There is no credible explanation as to why the facts which took place in the year 2004 namely the sale deeds in respect of the 3/4th share were not brought to the notice of the Lower Appellate Court and why they were sought to be brought on record only on 21-4-2015 long after the Lower Appellate Court had remanded the matter on 5-2-2007. The application for amendment therefore seems to have causal connection with the decision rendered in the tenancy proceedings which was obviously after hearing the parties prior thereto, which it seems was during the same contemporaneous time as the application moved by the Plaintiffs for amendment. Hence rejection by the Trial Court of the application for amendment Exhibit 69 filed by the Plaintiffs cannot be taken exception to. No case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

8 However, it is clarified that the observations made in the instant order should not construed as expression of any opinion on the legality and validity of the sale deeds and the said issue is therefore open for adjudication in appropriate proceedings.

[R.M.SAVANT, J]