IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.20921 OF 2014

Mr. Mohammed Shahab Abdul Wahab Farid
and anothers .. Petitioners

Versus

Mr. Ganesh Mohanlal Pardeshi .. Respondent

Shri. Sagar A. Joshi, for the Petitioners.
Ms. Neeta Karnik, for the Respondent.

CORAM : R.M. SAVANT, J.
DATE : 05th MARCH, 2015

P.C.

1. The Writ Jurisdiction of this Court is invoked against the order dated 11.03.2014 passed by the Learned 3rd Joint Civil Judge, Senior Division, Kalyan, by which order the application Exh.46 for amendment of the plaint came to be rejected.

2. The rejection is on the ground that the Plaintiff has not satisfied the due diligence test. In as much as the Plaintiff is seeking to amend the plaint in view of the prima-facie finding by the Courts below on the aspect of possession whilst considering the application Exh.5 for temporary injunction. It is required to be noted that the said adjudication is taken place in the year 2006 and the instant application has been filed in the year 2014. It is required to be noted that the suit is founded on the

fact that the Plaintiff is in possession and that is how the Plaintiff has sought declaration and injunction against the Defendants. However, by the amendment sought the Plaintiff seeks to incorporate the relief to the effect if ultimately the Trial Court comes to a conclusion that the Defendant is in possession, then possession be handed over to the Plaintiff. Hence, the suit filed for declaration and injunction is sought to be converted to a suit for possession and the amendment sought is founded on the basis of the prima-facie findings recorded by the Courts below on the aspect of possession. The Trial Court has therefore, rightly observed that it is for the plaintiff to prove his case in the trial that he is in possession. The Learned Counsel for the Petitioners sought to place reliance on the judgment of a Learned Single Judge of this Court reported in ***2013(2) Mh.L.J. 760*** in the matter of ***Shakuntala Balasaheb Balsaraf Vs. Ramdas Laxman Balsaraf and others*** has no application as the facts in the said case stand apart from the facts in the present case. In my view, having regard to the reasons mentioned in the impugned order, no case for interdiction in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed. Needless to state that if independent proceedings are filed by the Petitioner in respect of the claim of possession, the rejection of the application for amendment would not come in the way of the Petitioners.

[R.M. SAVANT, J]