

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

WRIT PETITION NO.8021 OF 2015

Shamrao Balwantrao Kedar

.. Petitioner

Versus

Suman Balu Thorat and others

.. Respondents

Mr. Sham Walve, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 7th OCTOBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 08.10.2014 passed by the learned District Judge-4, Nashik, by which order the application Exh.34 for amendment of the plaint filed at the appellate stage in Civil Appeal No.222 of 2012 came to be rejected. The amendments sought were relating to the Respondent Nos.7 to 9 in the Appeal who are the subsequent purchasers and who had purchased the property in question whilst the Appeal stood dismissed for default in this Court. In so far as the said Respondent Nos.7 to 9 are concerned, by judgment and order dated 16.02.2015 passed in Writ Petition No.23 of 2015, two grounds relating to the said Respondents were permitted to be incorporated in the Appeal. The said grounds read thus :-

“(Z-1) That the sale deed No.3308/2007 registered at the office of sub-Registrar, Dindori on 1-11-2007 is bogus, illegal and null and void and not binding upon the suit property as well as plaintiff and therefore requires to be cancelled.

(Z-2) That alleged sale deed is hit by lis pendence, and is prepared and executed only for the purpose of complications in the dispute pending between the appellant and the respondents.”

2. The Lower Appellate Court before whom the Appeal came to be transferred from this Court on the pecuniary jurisdiction of the District Court being enhanced, considered the said application and by the impugned order has rejected the same. The rejection is on the ground that the Respondent Nos.7 to 9 have already been impleaded in the Appeal and that the amendments sought were not necessary for disposal of the Appeal. In so far as the impugned order is concerned, the same is prior to the order passed in the Writ Petition, which order was passed on 16.02.2015. In view of the grounds now permitted to be incorporated vide the said order dated 16.02.2015 passed in the above Writ Petition, in my view, there is no warrant to permit the Appellants to amend the plaint so as to incorporate the challenge raised to the Sale Deed in question. Hence, the order passed by the Lower Appellate Court can be justified on the touchstone of the order dated 16.02.2015 passed in the said Writ Petition No.23 of 2015 permitting the incorporation of the said two grounds.

3. The Learned Counsel for the Petitioner sought to place reliance on the judgment of the Apex Court reported in (2004) 6 SCC 415 in the matter of Pankaja and another Vs. Yellappa (dead) by LRS. and others, where the Apex Court has held that an amendment which really sub-serves the ultimate cause of justice and avoiding further litigation should be allowed. In my view, the said judgment would not aid the Petitioner/original Appellant in seeking the amendment sought. In view of the fact that the grounds challenging the Sale Deed have already been incorporated in the Appeal. Hence, 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
Judgment/Order.