

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8316 OF 2014

Mohan Vitthal Bobade and another ... Petitioners
Vs.
Subhash Ramchandra Kadam and others ... Respondents

Mr. Sandip L. Babar for Petitioners.
Mr. Kalpesh Patil for Respondents.

CORAM : R. G. KETKAR, J.
DATE : 2ND JULY, 2015

P.C. :

Heard Mr. Babar, learned Counsel for petitioners and Mr. Patil, learned Counsel for respondents at length.

2. By this Petition under Article 227 of the Constitution of India, original defendants have challenged judgment and order dated 31.07.2014 passed by the learned Civil Judge, Senior Division, Karad below exhibit-43 in Special Civil Suit No.63 of 2012. By that order, the learned trial Judge allowed the application filed by the plaintiffs under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the plaint.

3. In support of this Petition, Mr. Babar submitted that by the proposed amendment, plaintiffs have contended that defendant No.3 is not agriculturist and by joining hands with the Revenue Officer, he had obtained a bogus certificate. Plaintiffs also want to add factum of illness of defendant No.1 during the period of execution of the sale deeds dated 08.08.2012 executed in favour of defendant No.3 and 14.08.2012 executed in favour of defendant No.2. Plaintiffs have also prayed for additional relief of declaration that the suit properties are the joint

family properties. He submitted that while deciding the application exhibit-5 for interim relief, the learned trial Judge has prima facie held that the partition is effected in the family. The learned trial Judge has also dealt with the illness of defendant No.1 while deciding that application. He, therefore, submitted that since the issue though prima facie decided, the learned trial Judge was not justified in allowing the application.

4. On the other hand, Mr. Patil supported the impugned order. He submitted that the issues are not yet framed and the learned trial Judge has allowed the application on the ground that the proposed amendment is necessary for determining the controversy between the parties and that it does not change the nature of the Suit.

5. After considering the submissions advanced by the learned Counsel appearing for the parties, I do not find that the learned trial Judge has committed any error while passing the impugned order. It is not in dispute that the issues are not yet framed. It is also material to note that the plaintiffs have filed Suit challenging the sale deeds dated 08.08.2012 and 14.08.2012. The learned trial Judge also recorded that since there are subsequent developments after filing of the Suit, the amendment application is filed for bringing those developments on record. The learned trial Judge also held that the proposed amendment does not change the nature of the Suit.

6. I do not find that the learned trial Judge has committed any error in allowing the application. The order is purely discretionary order. The learned trial Judge has held that the proposed amendment is necessary for deciding the controversy between the parties and the issues are yet to be framed. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the

petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) C.P.C.

(R. G. KETKAR, J.)

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