

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

WRIT PETITION NO.9617 OF 2015

Shri. Alliuddin Bashirroddin Kazi and others .. Petitioners

Versus

Shri. Manoj Gangadhar Burkule .. Respondent

Mr. M. A. Patil, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 28th OCTOBER, 2015

PC.

1. The order dated 06.05.2015 passed by the Learned 3rd Joint Civil Judge Senior Division, Nashik, rejecting the application Exh.61 filed by the Petitioners/original Plaintiffs for amendment of the plaint is taken exception to by way of the above Petition. The suit in question has been filed challenging the Sale Deed dated 21.08.2009 executed by the Plaintiffs in favour of the Defendant on the ground that the said Sale Deed has been got executed by the Defendant by playing fraud on them. In the said suit, a reference is also made to the Sale Deed dated 12.04.2010 executed by the Plaintiffs in favour of one Mr. Shete and Mr. Chavan in respect of the suit property. It has been averred in paragraph 7 of the plaint that it is pursuant to the said Sale Deed that the said Mr. Shete and Mr. Chavan were put in possession. However, by the amendment sought

vide addition of paragraph 9(A) and 14(B)(1) the Plaintiffs seek to incorporate a case that after the death of the tenant Sarubai Gite the Plaintiffs are in possession of the suit property. The relief vide prayer clause 14(B)(1) is sought on the said basis. The Trial Court having regard to the amendment sought vide prayer clause 9(A) and 14(B)(1) observed that the amendment sought is contrary to the case of the Plaintiffs as originally pleaded in the suit, wherein the Plaintiffs have specifically pleaded that it is the said Mr. Shete and Mr. Chavan who are in possession of the suit property. The Trial Court further observed that the issue in the suit is as regards the legality and validity of the Sale Deed dated 21.08.2009 and therefore the amendments sought are not germane for the adjudication of the suit. The Trial Court has also adverted to the fact that the application for temporary injunction filed by the Plaintiffs was rejected. In my view, having regard to the fact that by the amendment sought the plea which is contrary to the case as originally filed by the Plaintiffs is now sought to be incorporated, the order passed by the Trial Court rejecting the application for amendment cannot be found fault with. No case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]