

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

WRIT PETITION NO.9740 OF 2015

Sau. Mandakini Prakash Mungse

.. Petitioner

Versus

Shri. Ganpat Shankar Shinde and others

.. Respondents

Mr. G. R. Agrawal, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 19th OCTOBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 05.08.2015 passed by the Learned Civil Judge Junior Division, Igatpuri, by which order the application Exh.95 filed for amendment of the plaint came to be rejected.

2. The suit in question has been filed by the Petitioner/original Plaintiff for partition and separate possession of her share in the suit properties. By the amendment sought, the Plaintiff sought the impleadment of one Sanjay Shinde as Defendant No.17 and also the impleadment of the Collector Nashik as a party Defendant to the suit. The impleadment of the said Sanjay Shinde was sought on the ground that a Sale Deed has been executed in his favour by the Respondent No.1 herein.

The impleadment of the Collector Nashik is sought on the ground that the Petitioner seeks to challenge the Mutation Entry No.16716 and 16717 effected by the Tahsildar. The Trial Court has rejected the application on the ground that the Defendant No.1 had filed his Written Statement on 14.12.2011, wherein the factum of purchase of the land bearing No.69/B/2 by Sanjay Shinde was mentioned. In so far as the impleadment of the Collector Nashik is concerned, the Trial Court rejected the application on the ground that since no reliefs have been sought in respect of the said Mutation Entry No.16716 and 16717, the Collector Nashik could not be joined as a party Defendant to the suit. The Trial Court has also adverted to the fact that initially the suit properties were covered by clause (a) and clause (b) of paragraph 1. However, the Plaintiff has deleted the properties mentioned in clause (a) and the suit is therefore restricted to the properties mentioned in clause (b). The Trial Court has observed that the Plaintiff has not stated as to in which clause of the suit properties that the property sold to the Sanjay Shinde falls and in the absence of the same, the Plaintiff could not be allowed to amend the plaint, as the said amendment according to the Trial Court was not necessary.

3. In my view, having regard to the reasons mentioned in the impugned order, the order passed by the Trial Court rejecting the

amendment application cannot be faulted with. The Learned Counsel for the Petitioner sought to place reliance on Article 109 of the Limitation Act to contend that the relief in so far as the alienation by the Respondent No.1 is concerned, the limitation for the same would be 12 years. As indicated above, the Trial Court has deemed it appropriate to reject the application in the absence of the clarification in which clause of the suit properties the property sold to the Sanjay Shinde falls and in that view of the matter the question of applicability of Article 109 does not arise. 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]