

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

WRIT PETITION (STAMP) NO.33018 OF 2015

Smt. Umabai Shankar Bhave

(Since deceased through her legal heirs)

.. Petitioners

Versus

State of Maharashtra and another

.. Respondents

Mr. S. R. Page, for the Petitioners.

Mr. S. D. Rayrikar, AGP for the Respondent No.1.

Mr. A. S. Rao, for the Respondent No.2.

CORAM : R.M. SAVANT, J.

DATE : 18th DECEMBER, 2015

PC.

1. Not on board. Mentioned for grant of urgent interim reliefs.

2. The above Petition takes exception to the order dated 20.11.2015 passed by the Learned District Judge-2, Kalyan, by which order the application Exh.49 filed by the Petitioners for amendment of the plaint at the appellate stage came to be rejected. It appears that during the pendency of the Civil Appeal No.67 of 2002 the Respondent No.2 herein issued a notice dated 28.08.2015 under Section 260 of the Maharashtra Municipalities Act alleging encroachment/unauthorized construction being carried out by the Petitioners. The Respondent to the Appeal i.e. the

Petitioners herein therefore moved the instant application Exh.49 for amendment of the plaint so as to bring on record the said notice dated 28.08.2015 as also incorporate averments in respect thereof. The said application has been rejected by the Lower Appellate Court on the ground that the Appeal is filed by the Respondent No.2 herein against the decree passed in the suit in question, wherein it has been held that the Petitioners are the owners of the land in question and therefore, the amendment sought is not of any relevance for a decision in the Appeal. The application is also rejected on the ground that if the amendment is allowed the Appeal would have to be disposed of by remanding the matter back to the Trial Court on the basis of the said amendment and that would unduly delay a matter which is pending since the year 2002. In my view, in the light of the fact that the scope of the Appeal is restricted to the title to the property in question, the amendment sought by the Petitioners is not necessary for adjudication of the said Appeal. The Lower Appellate Court has therefore rightly observed that the Appeal can be decided by keeping in mind the issuance of the notice by the Respondent No.2. In my view, therefore, no case for interdiction with the impugned order dated 20.11.2015 is made out. However, since the application Exh.49 itself has been rejected by the Lower Appellate Court and since the Appeal is being proceeded with, it would be just and proper to permit the Petitioners

herein to place the notice on record by way of an affidavit. The same to be done within the time that would be granted by the Lower Appellate Court. With the aforesaid observations, the Writ Petition is disposed of.

[R.M. SAVANT, J]