

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

WRIT PETITION (STAMP) NO.32983 OF 2014

Rayat Shikshan Sanstha Satara and another

.. Petitioners

Versus

Shri. Shivraj Amrutrao Pantpratinidhi

and another

.. Respondents

Mr. Sanjeev P. Kadam, for the Petitioners

CORAM : R.M. SAVANT, J.

DATE : 20th FEBRUARY, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against two orders both dated 14.07.2014 passed by the Principal District Judge, Kolhapur. By the first order the application Exh.202 filed by the Respondent /original Plaintiff came to be allowed and by the second order application Exh.213 filed by the Respondent/Plaintiff came to be allowed. Both the applications have been filed for amendment of the plaint. In so far as the application Exh.202 is concerned, the same has been filed to amend the plaint so as to incorporate a prayer for being handed over vacant possession of the suit premises after removing the existing wall and newly erected construction. In so far as application Exh.213 is concerned, the same is filed to incorporate challenge to the order passed by the

Deputy Director of Land Records (DDLR) dated 29.10.2005 and as also order dated 16.02.2010 passed in Revision before the State Government. In so far as the application Exh.202 is concerned, the Lower Appellate Court has allowed the application on the ground that a prayer to that effect has already been made vide prayer clause 10(a). However, there is only change in the foundational facts therefore, the amendment sought is accordingly clarificatory in nature. In so far as the application Exh.213 is concerned, it seems that the proceedings under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 were going parallel to the present suit in question and order came to be passed by Deputy Director of Land Records (DDLR) on 29.10.2005 which was thereafter taken in Revision before the State Government which resulted in the order dated 16.02.2010 passed by the State Government. The said order dated 16.02.2010 was challenged before this Court by way of Writ Petition No.8173 of 2011, wherein this Court it seems observed that the Appellants in the said proceedings can raise all pleas before the Appellate Court before whom the present Appeal is pending. It is in the said circumstance that the Lower Appellate Court has deemed it appropriate to allow the application Exh.213. In so far as the application Exh.202 is concerned, in my view no fault can be found in the order passed by the Lower Appellate Court. However, in so far as the application Exh.213 is

concerned, this Court does not deem it appropriate to interfere with the amendment granted. It would be open for the Petitioners to urge the contention as regards the competency of the Civil Court to grant relief in respect of the orders passed Deputy Director of Land Records (DDLRL) and the State Government under the Consolidation Act and for the Lower Appellate Court to consider the same. With the aforesaid observations, the Writ Petition is disposed of.

[R.M. SAVANT, J]