

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

WRIT PETITION NO.1663 OF 2016

Mohammed Noormohammed Daruwale : Petitioner.
Versus
Sachin Kanhaiyalal Shah : Respondent.

Mr. N P Deshpande for the Petitioner.
Mr. S S Shah for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 16th February 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 27/07/2015 passed by the learned IInd Joint Civil Judge, Junior Division, Wai by which order the Application (Exhibit 61) filed by the Petitioner i.e. the original Defendant for being permitted to amend the written statement came to be rejected. By the amendment sought, the Petitioner sought to elaborate his case which has been pleaded in the written statement viz questioning the title of the Plaintiff to the suit property. The further case that is sought to be incorporated is that the Petitioner is not the heir of Mulchand Vishnudas Shah and his wife Kamlaben Shah and that the Petitioner is the only one of the beneficiaries of the property of the said Mulchand Vishnudas and Kamlaben Shah. The Petitioner also seeks to incorporate the pleadings questioning the filing of the suit on the ground of mis-joinder of necessary parties as it is the case of the Petitioner in the amendment sought that the

other co-owners of the property have not been joined as parties to the suit. It is required to be noted that the suit is of the year 2009 and it seems that the trial has already commenced and affidavit of evidence has been filed by the Plaintiff. It is at the said stage that the instant Application (Exhibit 61) came to be filed for amendment of the written statement so as to incorporate the case which has been adverted to herein before.

2 It seems that the third parties i.e. the other heirs of the said Mulchand Vishnudas Shah and Kamlaben Shah had filed an application for impleadment in the suit. The said application came to be rejected by the Trial Court. The Trial Court considered the said application (Exhibit 61), and by the impugned order dated 27/07/2015 has rejected the same. The Trial Court has rejected the said application on the ground that in the city survey record the name of the Plaintiff appears. The Trial Court has also rejected the application on the ground that the application of the third parties for their impleadment was also rejected.

3 In my view, apart from the said reasons, it is required to be noted that even as per the Petitioner's own case the Plaintiff is the co-owner and it is well settled that a co-owner is entitled to file a suit for eviction. Hence the amendment sought vide the amendment application (Exhibit 61) would not further the case of the Petitioner in the suit. Hence no case for interference in

the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]