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

WRIT PETITION NO. 1454 OF 2009

Mr. Bhagwan Tulshiram Chormale
Age : 71 years, Occupation : Agriculturist,
Residing at Koregaon, Taluka Barshi
District – Solapur.

... Petitioner.

V/s.

1. Namdeo Shankar Borkar
Since deceased through his legal heirs
and representatives :-

1A. Smt. Prayagabai Namdeo Borkar,
adult, Occupation, Household,

1B. Dashrath Namdeo Borkar
adult, Occupation, Service,

1C. Bapusaheb Namdeo Borkar
adult, Occupation : Service

1D. Nanasheb Namdeo Borkar
adult, Occupation : Service

1E. Kakasaheb Namdeo Borkar,
adult, Occupation : Service,

Nos.1A to 1E residing at
Vanjarwadi, Taluka : Bhoom,
Dist. Osmanabad.

1F. Sunil Namdeo Borkar,
adult, Occupation : Service,

Residing at Punyashlok Ahilyadevi,
Medi & Sheli Prakshetra, Bhilkhed,

Taluka – Chalisgaon, Dist. Jalgaon,

1G. Sou. Nandabai Bhimbhishan Kalsai

Adult, Occupation, Household,
1E. Sou. Sumanbai Vithal Kalsais,
Adult, Occupation : Household,
Nos.1 G and 1 H, residing at Post Vangi,
No.3, Taluka – Karmala,
District – Solapur.

2. Mr. Jagannath Pandurang Ramgude
Age : 45 years, Occupation : Agriculturist
Residing at Koregaon, Taluka – Barshi.

3. Mr. Goverdhan Pandurang Ramgude
Age : 35 years, Occupation : Agriculturist
Residing at Koregaon, Taluka – Barshi,
District – Solapur.

... Respondents.

Ms. Pratibha Shelke a/w. Suryajeet Chavan i/b. P.J. Thorat for the
Petitioners.

None for Respondents.

CORAM : N.M. Jamdar, J.

18 August, 2016.

Oral Judgment :-

By way of this Writ Petition the Petitioner challenges the order dated 24 November 2008 passed by the Civil Judge, Junior Division, Barshi below Exhibit 41 in Regular Civil Suit No. 151 of 2008 whereby the learned Judge rejected the application filed by the Petitioner – Plaintiff for amendment of the plaint.

2. The Petitioner filed a Regular Civil Suit No. 151 of 2008 in the Court of Civil Judge, Junior Division, Barshi for redemption

of mortgage. According to the Petitioner, since the Petitioner knew Respondent No.1, he approached Respondent No.1 and entered him into a transaction of mortgage by conditional sale in respect of the suit property. The suit property is an agricultural land admeasuring 1 Hectar 62 R. wherein Gat No.247/2 situated at Mouje Koregaon, Taluka Barshi, District Solapur. The Respondent No.1 filed a written statement and also counter-claim that the suit property is purchased by way of a sale deed dated 3 May 1982. In the plaint the Petitioner had stated that the sale deed dated 3 May 1982 stated to be executed by Respondent No.1 in favour of Respondent Nos.2 and 3 was *void ab-initio* and prayer to set it aside and therefore, it was not necessary to seek a separate declaration and no right accrued to Respondent No.1 on the basis of this deed to interfere with the possession of the Petitioner. Thereafter, the suit was filed on 28 March 2008. Thereafter, an application for amendment was moved on 17 July 2008. In the amendment application the Petitioner sought to incorporate heads of challenge to the deed dated 3 May 1982. This application was rejected by the impugned order by the learned Civil Judge holding that the proposed amendment will change the nature of the suit and therefore, amendment cannot be granted.

3. I have heard the learned Counsel for the Petitioner. It is noticed from the farad-sheet that on the earlier occasions none had

appeared on behalf of the Respondents. At the time of issuing notice in this Petition, this Court has noted that the application for amendment was moved when trial was yet to commence. The learned Counsel for the Petitioner has placed on record the case status of the suit and it shows that the trial has not proceeded further since the impugned order is passed.

4. The sole ground on which the learned Judge has rejected the application for amendment is that the amendment will change the nature of the suit. This reason is entirely erroneous. There is no change in the case of the Petitioner. The Petitioner is consistent in his stand that the deed dated 3 May 1982 is void. All that the Petitioner has done by way of the amendment to incorporate a specific challenge to the sale deed and there is no change at all in the nature of the suit. The amendment was moved even before the trial had commenced and there was no reason for the learned Civil Judge to reject such amendment. The substantial prejudice will be caused to the Petitioner if such amendment is not granted. The Respondent can always contest the amended portion by filing additional written statement and will suffer no prejudice.

5. In view of this position, the Writ Petition deserves to be allowed. Accordingly, Rule is made absolute in terms of prayer clause (b) which reads as under :-

“(b) That after perusal of the same this Hon'ble Court be pleased to quash and set aside the judgment and order dated 24.11.2008 passed by the Joint Civil Judge, Junior Division, Barshi in Application below Exhibit 41 in Regular Civil Suit No. 151 of 2008 and be pleased to allow Application below Exhibit 41 in Regular Civil Suit No.151 of 2008.”

6. The Petitioner will carry out the amendment in the plaint within period of eight weeks from today. It will be open to the Respondents to file their additional written statement in respect of the amended portion. Registry to communicate the order to the learned Civil Judge immediately in addition by way of e-mail. No order as to costs.

(N.M. Jamdar, J.)