

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.367 OF 2016**

Ambadas Revansiddha Bolkote

..Petitioner

Vs

Sidramappa Keshappa Bolkote
(dead) and Ors

.. Respondents

Mr. Milind R. Deshpande, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.

DATE : 29/01/2016

PC:

1. Heard Mr.Miind Deshpande, learned counsel for the petitioners at length.
2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 15.12.2014 below Exh.57 as also order dated 15.12.2014 below Exh.62 in Civil Appeal No. 236 of 2002 passed by the learned District Judge, Solapur.
3. The petitioner, hereinafter referred to as 'plaintiff', had instituted R.C.S. No. 1230 of 2000 for partition and separate possession. Suit was dismissed on 4.5.2002. Aggrieved by that decision, the plaintiff has instituted Civil Appeal No.236 of 2002 in the District Court, Solapur which is pending. During the pendency of this Appeal, the plaintiff filed application - Exhibit 57 under Order VI, Rule 17 of C.P.C. for amending plaint,

proposing following amendments:

- (1) Decree passed in Special Civil Suit No.188 of 2003 is not binding on the plaintiff;
- (2) Defendants no. 1 to 11 should not create third party interest on the basis of the decree passed in Special Civil Suit No.188 of 2003 and
- (3) for impleading parties, namely;

- (1) Kusumavati Sadashi Bolkote;
- (2) Pornima Sadashi Bolkote;
- (3) Pratima Sadashiv Bolkote;
- (4) Ambika Sadashiv Bolkote;
- (5) Chetan alias Chanbasappa Sadashiv Bolkote;
- (6) Sonabai Sidramappa Bolkote ,

in the suit.

4. Mr. Deshpande submitted that the plaintiff herein was not impleaded in Special Civil Suit No.188 of 2003. That suit was decreed in terms of compromise terms. Aggrieved by this compromise decree, he has instituted First Appeal in this Court and has filed application for leave to appeal. The said proceedings are pending in this Court. Mr Deshpande, therefore, submitted that liberty may be granted to the plaintiff to take out fresh application for amending the plaint for impleading (1) Kusumavati Sadashi Bolkote; (2) Pornima Sadashi Bolkote; (3) Pratima Sadashiv Bolkote; (4) Ambika Sadashiv Bolkote; (5)

Chetan alias Chanbasappa Sadashiv Bolkote; (6) Sonabai Sidramappa Bolkote as defendants in that suit as he has already instituted Appeal in this Court. In view thereof, I do not find any necessity to deal with challenge raised by the plaintiff to order below Exh.57 subject to granting liberty to the plaintiff to file fresh application only for impleadment of these persons as defendants in the suit.

5. As far as the order Exh.62 is concerned, the plaintiff took out application under Order 41, Rule 27 of C.P.C. for producing additional evidence. By the impugned order dated 15,12,2014, the learned District Judge disposed of the application by observing whether the documents, so produced by way of additional evidence, are necessary or not, can be considered at the time of deciding the main appeal. In view of the decision in Union of India Vs. Ibrahim Uddin, (2012) 8 SCC 148, I do not find that the learned District Judge has committed any error in passing the impugned order. The learned district Judge has kept the question open. In view thereof, Petition is disposed of in the following terms:

- (1) The petitioner is granted liberty to take out fresh application only for the purpose of impleading (1) Kusumavati Sadashi Bolkote; (2) Pornima Sadashi Bolkote;

(3) Pratima Sadashiv Bolkote; (4) Ambika Sadashiv Bolkote; (5) Chetan alias Chanbasappa Sadashiv Bolkote; (6) Sonabai Sidramappa Bolkote as parties in that suit. If such application is filed, all contentions of the opposite party are kept open.

(2) As far as the order dated 15.12.2014 below Exh.62 is concerned, no case is made out for interfering in the order. Hence, Petition is disposed of in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)