

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

WRIT PETITION NO.859 OF 2016

Vidya Vishnu Manwadkar

.. Petitioner

Versus

Bhalchandra Kiran Kurne and others

.. Respondents

Mr. Dushyant Purekar, for the Petitioner.

Ms. Manisha Bhosale, for the Respondent Nos.1 and 2.

CORAM : R.M. SAVANT, J.

DATE : 25th JANUARY 2016

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 11.01.2016 passed by the Learned 3rd Joint Civil Judge, Senior Divison, Thane, by which order the application Exh.73 filed by the Plaintiffs for amendment of the plaint came to be allowed and resultantly, the plaint was permitted to be amended in terms of the amendment sought vide the said application Exh.73. The cause for moving the said application Exh.73 was the fact that in the additional written statement filed by the Defendant No.2, the said Defendant has referred to a Gift Deed executed by the Defendant No.1 in favour of the Defendant Nos.2 and 3 in respect of the suit property. The suit property is a flat admeasuring 750 sq.ft. situated in housing society in Thane and house

No.1/3341 situated at Gondhali Galli, Belgaum, Karnataka admeasuring 650 sq.ft. The Trial Court having regard to the fact that the suit is at incipient stage deemed it appropriate to allow the said application Exh.73 and more so, considering the fact that in the additional written statement the Defendant No.2 has referred to a Gift Deed executed by the Defendant No.1.

2. The Learned Counsel appearing on behalf of the Petitioner i.e. the original Defendant No.2 Mr. Dushyant Purekar would contend that by seeking the relief of declaration that the Gift Deed is null and void, the nature of the suit would change. The Learned Counsel also raises a question as to whether the Gift Deed and Sale Deeds executed in respect of the property at Belgaum can be set aside by the Trial Court exercising jurisdiction in Thane.

3. Per contra, the Learned Counsel appearing on behalf of the Respondent Nos.1 and 2 i.e. original Plaintiffs would support the impugned order and would contend that the cause for moving the amendment application was the additional written statement filed by the Defendant No.2, wherein she has referred to the Gift Deed executed by the Defendant No.1 in favour of the Defendant Nos.2 and 3.

4. Having heard the Learned Counsel for the parties. In my view, there is no merit in the above Petition, as indicated above, the suit concerns the said two properties at Thane and Belgaum. It seems that the Defendant No.2 had filed her written statement and thereafter has filed additional written statement, wherein she has referred to the Gift Deed executed by the Defendant No.1 in favour of the Defendant Nos.2 and 3. The said fact therefore necessitated the Plaintiffs applying for amendment of the plaint as obviously since the documents were concerning the suit property in question the Plaintiffs had to seek relief in respect of the said documents, which the Plaintiffs have sought by the said application Exh.73. The contentions of the Learned Counsel for the Petitioner are revolving around the merits of the case of the Plaintiffs incorporated by way of the amendment, which this Court does not think fit at the stage of considering an application for amendment to go into. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]