

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 4080 OF 2016

SMT. KAMAL SUBHASH CHAVHAN

...Petitioner

Versus

RAKHAMA SUKHADEV MAGAR
(DECD) AND ORS

...Respondents

....

Mr. Prashant Bhavake, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 06th APRIL, 2016

P.C.

1. Heard Mr. Prashant Bhavake, learned Counsel for the petitioner.
2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 6.7.2013 passed by learned Joint Civil Judge, Junior Division, Pandharpur below Exhibit-79 in R.C.S. No.23/2005. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as the plaintiff for impleading Santosh Sadashiv Mahadik as a party to the suit.
3. Mr. Bhavake submitted that after dismissing the

application, on 12.11.2013 the suit is dismissed. He invited my attention to the trial Court's judgment and submitted that the suit was dismissed only on the ground of not impleading necessary parties. He invited my attention to the issues framed by the learned trial Judge. The learned trial Judge framed four issues. Out of four issues, three issues were decided in favour of the plaintiff and only issue No.4 is negatived on the ground that the plaintiff did not pray for cancellation of the sale deed dated 2.12.2004 by which the property was sold by defendant No.1 in favour of Santosh Sadashiv Mahadik. The plaintiff did not amend the plaint and consequently is not entitled to partition. Mr. Bhavake submitted that aggrieved by the trial Court's judgment, the plaintiff has preferred Regular Civil Appeal No.175/2013 in the District Court and the same is pending.

4. He submitted that as per Section 105(1) of Code of Civil Procedure, 1908 (for short, 'CPC'), the plaintiff may be permitted to challenge the order impugned in the petition by amending the appeal memo. He further submits that liberty may be reserved to the plaintiff to file application in the pending appeal for impleading Santosh Sadashiv Mahadik as party respondent in

the appeal.

5. As noted earlier, the application for impleading Santosh Sadashiv Mahadik was rejected on 6.7.2013 and the suit was dismissed on 12.11.2013. The petition, therefore, is rendered infructuous. However, in view of section 105(1) of CPC, the plaintiff is permitted to amend the appeal so as to challenge the impugned order. Liberty is reserved to the plaintiff to challenge the impugned order for pointing out any error, defect or irregularity in the impugned order, affecting the decision of the case. Liberty is also reserved to the plaintiff to take out appropriate application, if permissible in law. All contentions of the respondent in this regard are expressly kept open. Grant of liberty shall not be construed as an expression on merits either way. Subject to this, Petition is disposed of. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)