

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.809 OF 2014

Ritarani Ingule ... Petitioner
Vs.
Tatoba Jyoti Khade (decd) through heirs
Hirabai Tatoba Khade and others ... Respondents

Mr. Surel Shah a/w. Ms Gouri Shah for Petitioner.
Mr. Amit Borkar for Respondents No.1 to 7.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 16, 2016

P.C. :

Heard Mr. Shah and Ms Shah, learned Counsel for the petitioner and Mr. Borkar, learned Counsel for respondents No.1 to 7 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.2', has challenged the judgment and order dated 10.07.2013 passed by the learned 8th Joint Civil Judge, Junior Division, Kolhapur below exhibit-70 in Regular Civil Suit No.598 of 2007. By that order, the learned trial Judge allowed the application made by respondents No.1 to 7, hereinafter referred to as 'plaintiffs', under Order VI, Rule 17 of C.P.C. for amending the plaint thereby substituting Revision Survey No.124/7 by Revision Survey No.124/5.

3. In support of this Petition, Mr. Shah strenuously contended that plaintiffs instituted Suit in or about June 2007 inter alia praying for redemption of Mortgage Deed dated 07.07.1948 and for perpetual injunction restraining the defendants from obstructing their possession. The application for amendment is made on 21.06.2013 i.e. nearly after 6 years from filing of the Suit. He submitted that as the Suit is instituted post C.P.C. Amendment of 2002, plaintiffs have to make out a case of

due diligence. He invited my attention to the application made by the plaintiffs under Order VI, Rule 17 of C.P.C. and submitted that the learned trial Judge was not justified in allowing the amendment application.

4. On the other hand, Mr. Borkar supported the impugned order. He submitted that the Suit is instituted for redemption of Mortgage Deed dated 07.07.1948. He has produced a copy of the Mortgage Deed wherein the property involved is Revision Survey No.124/5 and submitted that obviously, there was typographical error in mentioning Revision Survey No.124/7. The nature of the Suit does not change.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The learned trial Judge, after perusing the Mortgage Deed as also the revenue extract, has allowed the application by observing that defendants are entitled to file written statement to the amended plaint and thus will get opportunity. The learned trial Judge also observed that the nature of the Suit is not changed and no prejudice will be caused to the defendants if application is allowed. For the reasons recorded in paragraph 3 of the impugned order, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, Petition fails and the same is dismissed.

6. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)