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

WRIT PETITION NO. 8592 OF 2011

Mr. Yatin Raghunath Wagh. ... Petitioner.

V/s.

Jagannath Lalitprasad Poddar. ... Respondent.

with

WRIT PETITION NO. 8806 OF 2011

Mr. Yatin Raghunath Wagh. ... Petitioner.

V/s.

Vasant Dagdu Khairnar. ... Respondent.

with

WRIT PETITION NO. 8808 OF 2011

Mr. Yatin Raghunath Wagh. ... Petitioner.

V/s.

Smt. Chhaya @ Leelabai Ramdas Ghorpade. ... Respondent.

Mr. S.M. Gorwadkar, Senior Advocate a/w. Sujay Gangal and
Gurudas Gorwadkar for all the Petitioner.

Mr. Milind Sathaye for Respondents in all Petitions.

CORAM : N.M. Jamdar, J.

15 November, 2016.

Oral Order :-

Writ Petition No. 8808 of 2011 is not on board. By consent, taken on board alongwith other connected matters which are on board.

2. Heard learned Counsel for the parties. Rule. By consent of parties taken up for final disposal considering the nature of controversy involved. By order dated 5 January 2012, notice was issued to the Respondents and proceedings in the suit have been stayed.

3. In all these Petitions, the Petitioner is the same, who is the landlord of the suit premises. The Respondents in each of the Petitions, the Plaintiffs are the tenants of the suit premises. The suits have been filed seeking an order of injunction against the Petitioner – landlord that the possession of the respective Plaintiffs should not be disturbed by the Petitioner – landlord.

4. An application for amendment was moved by the Respondents – Plaintiffs to incorporate paragraphs 6-a and 6-b to the plaint. By virtue of this amendment, the Respondents – Plaintiffs sought to bring on record the assertion that the premises have collapsed, but they have not collapsed due to passage of time, but have been pulled down by the Petitioner – landlord and the tenancy of the Respondents – Plaintiffs continues. This amendment has been granted by the impugned order.

5. The learned Senior Advocate for the Petitioner submitted that there is no specific prayer in the suit or in the amended portion for restoration of the possession and the tenancy has already come to an end. He submitted that in absence of any specific prayer the amendment need not be granted, when premises no longer exist and when the suits had become infructuous. The learned Counsel for the Respondents on the other hand submitted that in paragraphs 6-b, a reference is made to restoration of possession and survival of tenancy rights, though there may not be a specific prayer. The learned Counsel for the Respondents submitted that in any case if such objection of technical nature has been raised by the Petitioner, an amendment application incorporating the prayer can always be made.

6. Considering these circumstances and the fact that the suit has been stayed, it is open to the Respondents – Plaintiffs to apply for necessary amendments in view of the subsequent event and seek substantial reliefs in that regard. Therefore, though I am inclined to set aside the impugned orders on the ground that no specific prayer was made in the plaint, I am inclined to give liberty to the Respondents – Plaintiffs to move an application for amendment in the circumstances mentioned above and in view of the averments in paragraphs 6-b of the plaint.

7. In the circumstances, the Writ Petitions are disposed of by quashing and setting aside the impugned orders dated 8 January 2010 and 12 December 2008. It will be open to the Respondents – Plaintiffs to file suitable application for amendment as regard averments and the prayers. The Writ Petitions are disposed of in above terms. The application will be decided on its own merits.

(N.M. Jamdar, J.)