

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

WRIT PETITION (ST) NO. 27604 OF 2016

Ashok Ramchandra Chugani

... Petitioner

Vs

Sapna Ramesh Aswani & Ors.

... Respondents

...

Mr. K. N. Kandekar for the Petitioner.

Ms. Jenifer M. a/w. Jayesh Rathod i/b. Dhiren Shah for the Respondent.

CORAM : N. M. JAMDAR, J.

DATE : 26 OCTOBER, 2016

P.C. :

1. The petitioner has challenged the order passed by the learned City Civil Court Judge, Mumbai dated 16th July 2016 allowing the chamber summons filed by the respondent – plaintiff for amendment of the plaint. The learned City Civil Court Judge has granted amendment holding that the amendment sought to be carried out gives better particular in respect of the basic averment regarding the claim of ownership.

2. The learned counsel for the petitioner submitted that the claim of ownership advanced by the respondent- plaintiff is not tenable. This is a contention on merits. Merely because amendment is allowed it does not mean the contents of the amendment are proved. The petitioner will have an opportunity to file an additional

written statement as well as cross examine the Respondent-plaintiff. The learned counsel for the petitioner submitted that at this stage of the suit amendment ought not have been granted. He relied upon the decision of the Division Bench of this Court in the case of **Mahadeo s/o. Maruti Bhanje Vs. Balaji s/o. Shivaji Pathade & Anr¹**. The Apex Court has clarified that it is not an inflexible rule that once the trial has commenced, no amendment at any circumstance can be granted. The petitioner has invoked the power of superintendence of this Court, which is not to be exercised to correct every error. The learned judge has taken note that documents are yet to be exhibited and cross examination is yet to start. Therefore it is not that the trial has commenced to such a stage that grave prejudice will be caused to the defendant. Apart from this position the Code of Civil Procedure had not provided any appeal or revision against such interlocutory orders and remedy is provided under Section 105 of the Code of Civil Procedure. In these circumstances, no interference is warranted under Article 227 of the Constitution of India. Writ Petition is accordingly rejected.

(N. M. JAMDAR, J.)

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