

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11182 OF 2013**

Rekha Shashikant Savant

Petitioner

Vs

Smt. Shevanti Gopal Nigudakar
and Ors.

.. Respondents

Mr. S. M. Gorwadkar, Senior Advocate with Mr . , Advocate for
Petitioner.

Mr.Sampatrao Pawar, Advocate for Respondent no. 1.

Mr Rupesh Bobde, Advocate for Respondents no. 2 to 4.

None for respondent no.5, through served.

CORAM : R.G.KETKAR,J.

DATE : 11/03/2016

PC:

1. Heard Mr. SM.Gorwadkar, learned senior counsel for the petitioner, Mr. Sampatrao Pawar, learned counsel for respondent no.1, and Mr.Rupesh Bobde, learned counsel for respondents no. 2 to 4 at length. Office remark shows that respondent no.5 is served. However, none appears on behalf of the fifth respondent. In view of the order dated 4.12.2013, Rule. Learned counsel for the respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 8.10.2013 passed by the learned Civil Judge, Jr. Dn., Mangaon, below Exhibit-74 in Regular Civil Suit No.22 of 2007.

By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as 'plaintiff', under Order VI, Rule 17 of C.P.C. for amending the Plaint.

3. Mr. Gorwadkar submitted that the plaintiff has instituted suit against the respondents, hereinafter referred to as 'defendants', for perpetual injunction restraining the defendants from causing obstruction of the plaintiffs' possession over the suit property. The plaintiff amended the plaint and sought declaration that the sale deeds executed by defendants no. 2 to 5 during the pendency of the suit are not binding on the plaintiff. The plaintiff filed application Exhibit 74 for amending Plaint. The plaintiff intends (i) to incorporate paragraph 5-A and prayer clause (1) so as to claim acquisition of ownership by adverse possession. (ii) The plaintiff also intends to implead other co-sharers as defendants no. 6 to 10, namely, defendant no.6-Rajshree Rajesh Salvi, defendant no.7-Sushma Pravin Sawant, defendant no.8-Sanjita Sanjay Sawant, defendant no.9-Shilpa Sachin Sawant, defendant no.10-Santosh Vasant Vichare. After arguing the petition for some time and after obtaining instructions, Mr. Gorwadkar states that the plaintiff is not pressing following amendments:

- (1) impleadment of defendants no. 6 to 10;
- (2) incorporating paragraph 5-A as also prayer clause (1), for claiming ownership by adverse possession in view of decision of

the Apex Court in the case of Gurudwarsahib Vs. Gram Panchayat, Village Sirthala, 2014 (1) SCC 669. Statements of Mr Gorwadkar are accepted.

4. Mr. Pawar and Mr. Bobde invited my attention to paragraph 8 of the Plaint and contended that the plaintiff asserted therein that he has instituted suit for protecting rights of co-sharers who are proposed to be added as defendants no. 6 to 10. The plaintiff is not claiming any relief against the co-sharers. Mr. Pawar and Mr. Bobde, therefore, submitted that the amendment proposed by the plaintiff for impleadment of defendants no. 6 to 10 may not be allowed.

5. As noted earlier, the plaintiff has claimed that defendants no. 6 to 10 are co-sharers. In paragraph 8, the plaintiff has asserted that she is not claiming any reliefs against co-sharers. The plaintiff also does not wish to adversely affect the rights of co-sharers. On the other hand, suit is instituted for protecting the rights of co-sharers and, therefore, they are not impleaded as party defendants. In view thereof as also having regard to the settled position of law that one co-owner can maintain the suit, in my opinion, it is not necessary to implead the proposed defendants no. 6 to 10. That apart, in view of the statement of Mr. Gorwadkar, amendments as proposed for impleadment of defendants no. 6 to 10 as also paragraph 5-A and prayer clause (1) are disallowed. The application is allowed in respect of

prayers clause 2 and 3 of the application for amendment. The plaintiff is permitted to substitute the name of the plaintiff. Hence, the following order.

(i) Amendments in terms of paragraphs 3A, 4A, as also prayers clause 2 and 3 is allowed. Rest of the amendments, namely, amendment for impleadment of defendants no.6 to 10, paragraph 5A and prayer clause (1) are disallowed.

(ii) Amendment shall be carried out within 14 days from today and amended plaint shall be served on the defendants. The defendants shall file additional written statement within four weeks from service of the amended plaint.

(iii) Liberty is reserved to the parties to apply for expeditious disposal of the suit. If such application is made, the learned trial Judge will pass appropriate orders keeping in mind that suit is pending since 2007.

(iv) Rule is partly made absolute in the above terms with no order as to costs.

(R.G.KETKAR, J.)