IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12342 OF 2016

Mrs Dinaz Jehangir Balasara and anr. … Petitioners
v/s
Mr Dilip Babulalji Thakur … Respondent

Mr Chandrakant N. Chavan for Petitioners.

CORAM : RAJESH G. KETKAR, J.

DATE : 25TH OCTOBER, 2016.

P.C. :-

1. Not on board. At the request of Mr Chavan, learned counsel for Petitioners, taken up for admission.

2. The Petitioners have challenged the judgment and order dated 27th September 2016 passed by the learned Trial Judge in R.A.E. Suit No.1147/1860 of 2007. By that order, the Application made by the Plaintiffs for amending the plaint was allowed.

3. Mr Chavan has taken me through the plaint and written

statement. The Plaintiffs asserted that they are joint owners and landlords of the property known as Gangadevi Bhuvan, 11, Uranwalla Street, Grant Road, Mumbai 400 007. The Defendants have not disputed the title of the Plaintiff. However, the Plaintiff filed an Application for amending the plaint only on the ground that during the course of cross-examination, the Defendants' Advocate put some questions as regards ownership of the premises. The Defendants have not challenged the title of the Plaintiff. The Trial Judge was not justified in allowing the Application for amendment.

4. I have considered the submissions made by Mr Chavan. I have perused the material on record. Perusal of cross-examination of Plaintiff's witness shows that on behalf of the Defendants, the cross-examination of PW 1 was conducted wherein some questions regarding title of the Plaintiff were put. The learned Trial Judge has considered the cross-examination of PW 1 and observed that the questions were put as to the title of the Plaintiff to the Plaintiff's witness at the time of trial and it could not be said that the Plaintiff was not landlord. The learned Trial Judge was wrong in allowing the Application for amendment, if

any. After perusal of the record and cross-examination and reasons recorded for allowing the application, I do not find that the learned Trial Judge has committed any error. Hence, no ground is made out to entertain this Petition under Article 227 of the Constitution of India. Petition is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

6. However, it is made clear that where a decree is challenged 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 proposed proceedings as contemplated by Section105(1) C.P.C.

(RAJESH G. KETKAR, J.)