

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3998 OF 2017

Sukumar Shantappa Shirguppe ...	Petitioner
Vs.	
Ashok Shantappa Shirguppe & Ors. ...	Respondents

Mr.S.R.Ganbavale, for the petitioner

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 6th November, 2017.

P.C.

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioner herein is the appellant in Regular Civil Appeal No.7 of 2015 pending before the District Judge at Ichalkaranji. In the original proceedings, the petitioner was the plaintiff.

3. The learned counsel for the petitioner submits that on 14.10.2014, the learned Judge had recast 9 issues. It appears that thereafter the respondent Nos. 1 to 3 as well as 5 and 6 below Ex.151, prayed that an issue regarding non-joinder of necessary parties may be framed. The learned Judge had called for a reply on the same day. It appears that the Say was filed by the respondent i.e. the preesnt petitioner. The application was also argued on merits. On 17.11.2014, the learned Judge had heard the

arguments on Exhibit 151 and had also passed an order saying the application was partly allowed. Accordingly, an additional issue was framed i.e. Issue No.7A which reads as under :-

“7A. Whether the suit deserves to be dismissed for non-joinder of necessary parties.”

4. The suit was dismissed. The petitioner filed an application before the appellate Court below Exhibit 34. The said application was filed under Order I Rule 10 of C.P.C. It was the contention of the defendant in the appeal that although the application below Exhibit 151 was allowed on 17.11.2014, the plaintiff had not carried out the necessary amendment and had not joined the proposed parties and thereafter in appeal, an application was filed under Order I Rule 10 seeking impleadment of the parties even at the stage of the suit. Today, the learned counsel for the petitioner contends that although the application below Exhibit 151 was allowed, the petitioner had no knowledge about the order by which the application below Exhibit 151 was partly allowed and, therefore, it was necessary to consider the issue at the appellate stage.

5. The learned appellate Court has rightly held that the suit was decided on the basis of the pleadings of the parties and the evidence was adduced by them before the trial Court and, therefore, reverting back to that stage would not be appropriate. The learned appellate Court has also

considered the fact that although the application was partly allowed, the petitioner herein had not demonstrated the circumstances in which he had failed to carry out the necessary amendment. The impugned order dated 22.9.2016 does not call for any interference as the learned Court has rightly considereed the application on merits.

6. Rule is discharged. The Petition stands disposed of.

7. It is made clear that all the contentions may be heard by way of arguments.

[SMT. SADHANA S.JADHAV, J.]