

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8088 OF 2016

Janardhan Sukhdeo Patil and another ... Petitioners
Vs.
Prabhavati Mahantappa Talikoti and another ... Respondents

Mr. Dilip Bodake for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : MARCH 21, 2017

P.C. :

Heard Mr. Bodake, learned Counsel for petitioners at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'plaintiffs', have challenged the judgment and order dated 16.09.2015 passed by the learned District Judge-3, Solapur below exhibit-10 in Regular Civil Appeal No.111 of 2012. By that order, the learned District Judge rejected the application made by the plaintiffs in pending appeal under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for incorporating paragraph 8-A after paragraph 8 in the original plaint.

3. In support of this Petition, Mr. Bodake invited my attention to the application exhibit-10 made by the plaintiffs under Order VI, Rule 17 of C.P.C. He submitted that respondents-defendants executed agreement of sale on 12.05.1987 in respect of suit property namely, Gat No.226 as also another property bearing Gat No.228 admeasuring 0-60.57 Ares. He submitted that respondents have admitted execution of that agreement of sale in respect of Gat No.228. In order to corroborate case of the plaintiffs in the present Suit, the proposed amendment is necessary for determining the real controversy between the parties. He, therefore,

submitted that the learned District Judge committed serious error in rejecting the application.

4. I have considered the submissions advanced by Mr. Bodake. I have also perused the material on record. Perusal of the plaint shows that plaintiffs have instituted Suit for specific performance of agreement of sale dated 12.05.1987 in respect of land bearing Gat No.226 admeasuring 0.32.37 Ares. The Suit instituted by the plaintiffs was dismissed by the trial Court on 05.02.1994. While dismissing the Suit, the learned trial Judge answered issue No.1 in the affirmative. Issue No.1 was whether plaintiffs prove that deceased Nagappa had agreed to sell the suit property for consideration of Rs.1,50,000/-. It is in that context, it is material to consider paragraph 8-A proposed to be incorporated by the plaintiffs. By paragraph 8-A, plaintiffs want to bring on record agreement of sale dated 12.05.1987 executed by deceased Nagappa in favour of the plaintiffs whereunder he agreed to sell Gat No.228. While rejecting the application, the learned District Judge observed that the proposed amendment is not necessary for determining the controversy raised between the parties.

5. In view thereof, I do not find that the learned District Judge has committed any error in rejecting the application. Hence, Petition fails and the same is dismissed. However, it is made clear that where a decree is challenged by the petitioners, 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 memorandum of the proceedings as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)