

Sequeira

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

WRIT PETITION NO. 454 OF 2017

Shri Ramraj Satyadev Pandey. .. Petitioner
Vs
Ravishankar Vijayshankar Sharma. .. Respondent

***Along with
WRIT PETITION NO. 455 OF 2017***

Smt.Vijayalaxmi Shivram Redij & ors. .. Petitioners
Vs
Ravishankar Vijayshankar Sharma. .. Respondent

Mr.S.S.Redij, for the Petitioner in both petitions.

Ms.Snehal Modi, for the Respondent in both petitions.

***Coram : N.M.Jamdar, J.
Date : 16 March 2017.***

P.C. :

Heard learned counsel for the parties. By the impugned order, the Appellate Bench has granted an amendment to the plaint as sought for by the Respondent – original Plaintiff in the appeal filed by the Petitioner. The Respondent – original Plaintiff had sought to incorporate a prayer in the plaint for grant of mesne profits.

2. The learned counsel for the Petitioner submitted that, having not made a prayer for mesne profits in the plaint, in an appeal

filed by the Petitioner such relief by amending the plaint cannot be sought for and the amendment granted is therefore incorrect and beyond jurisdiction of the appellate Court. The learned counsel for the Respondent supported the impugned order.

3. The order passed is an interlocutory order. All the arguments which have been advanced by the Petitioner in respect of correctness of the impugned order can be advanced by the Petitioner in the appeal. Merely because the amendment is carried out it does not mean that the arguments of the Petitioner on merits of the amendment including the grant of any relief to the Respondent, are foreclosed. The prejudice to the Petitioner can be redressed by issuing necessary clarification. The Petitioner will be entitled to raise all such contentions in respect of the propriety and correctness of the impugned order including the contention whether the Respondent is entitled to seek a relief of this nature for the first time in appeal. The learned Appellate Bench will decide this aspect of its own merits. All the contentions of the Petitioner as contended in the memo of these Writ Petitions and the response of the Respondent thereto, are kept open to be considered by the Appellate Court. Writ Petitions are accordingly disposed of with a clarification as above.

(N.M.Jamdar, J.)