

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 449 OF 2014**

Shri Raghunath Balkrishna Patil

.... Petitioner

Versus

Shri Balkrishna Vithoba Patil &Ors.

...Respondents

Mr. Sandesh D. Patil, for the Petitioner.

Ms. Anusha P. Amin for respondent Nos. 3 to 6.

Mr. mandar Limaye for respondent No.7.

CORAM : SMT. SADHANA S.JADHAV, J.

DATE : 14th November, 2017.

P.C. :

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

2. The petitioner herein happens to be the original plaintiff in R.C.S. No.55 of 1996. The petitioner happens to be the eldest son of defendant No.1. Defendant No.2 in the said suit is the second wife and the defendant Nos. 3,4 and 5 are the real brothers of the plaintiff and the defendant No.6 is the first wife of the defendant No.1, whose legal heirs are brought on record. The prayers in the suit were as follows :-

“a) It be declared that, plaintiff has absolute rights in

the suit land.

a.1) That, it may be declared that, the sale deed executed by and between the defendants no.1 to 6 as vendors and defendants no.7 has purchased or declared illegal and bad in law and not binding upon this plaintiff and the M.E. certified in lieu of he said transactions, bearing no.792 be set aside.

a.2) That the defendant be directed to hand over the peaceful possession of the suit property to the plaintiff.

b) It be declared that, defendants have no rights, title, interest to sale the suit property.

c) The defendants may, be restrained from selling and or creating third party interest in the suit property.

d) pending the hearing of this suit ad-interim injunction may be granted of the above para.

e) Cost of the suit may be awarded to the plaintiff.

f) Any other and further relief be granted in favour of the plaintiff as the Hon'ble court deems fit, just and proper in the interest of the suit."

3. In the year 2004, the prayer clause 2 in the plaint was sought to be deleted and was deleted.

4. The learned counsel for the petitioner submits that he has no instructions as to whether an application below Exhibit 5 was filed and decided. That the plaintiff had filed an application seeking amendment to

the plaint and the proposed amendments were from para 6B, 6C and 6D. It was contended by the plaintiff that on 11.5.2012, defendant Nos. 8 and 9 accompanied by their henchmen had tried to demolish the structure of House No.72A and 72B of the plaintiff. The plaintiff was constrained to approach Shil-Dighar Police Station on 10.5.2012 and had lodged a complaint in the police station. It was urged that the Police Inspector who was sought to be impleaded as defendant No.10 had made every attempt to support defendant Nos. 1 to 9. The plaintiff had further submitted by way of amendment that the said structure was demolished on 12.5.2012 and the said property was owned by the plaintiff. It is also submitted that defendant No.10, who happens to be the Police Inspector, had threatened the plaintiff of dire consequences. It was prayed by way of amendment that the defendants, their agents, servants and persons claiming through them be restrained by an order of permanent perpetual injunction from carrying out construction in the suit property i.e. Survey No.51 Hissa No.1 of Village Dighar. There was also a prayer that they shall not create any third party interest. He had also prayed that defendant No.10 who happens to be the Police Inspector of Shil-Dighar Police Station be impleaded as party-defendant. The learned Civil Judge, Senior Division Thane by an order

dated 23.8.2013 has been pleased to dismiss the application by assigning reasons on the facts of the case. The learned Court has observed that the suit was initially filed by the plaintiff for declaration and permanent injunction. The said suit was amended from time to time. It is also not demonstrated by the plaintiff as to how the proposed defendants Nos. 8 to 10 were essential for imparting justice in favour of the plaintiff in consonance with the prayers made in the petition. It was specifically observed that initially, the prayer seeking recovery of possession was deleted by the plaintiff himself vide amendment dated 20.2.2004. The learned Court has rightly observed that the plaintiff has been taking inconsistent stands at various stages. It was also observed that the proposed legal heirs of defendant No.6 were also not brought on record although the original defendant No.6 happened to be the real mother of the plaintiff.

5. Upon perusal of the proposed amendment and the prayer clauses therein, in consonance with the original prayers made in the plaint, it is obvious that at the time of institution of the suit also the fact that the plaintiff was seeking a direction to hand over peaceful possession of the suit property is concerned, he was not in possession of the suit property. However, as an after-thought, the said prayer clause was deleted. By the

proposed amendment, the plaintiff had made an attempt to restore the prayer clause which was already deleted which would change the very nature of the suit as the plaintiff was not sure as to on the date of institution of the suit, he was in possession of the suit property or not and by way of amendment, the plaintiff had given certain dates when he was being ousted from the property after institution of the suit. In view of the inconsistent stand taken by the plaintiff at various stages, it can simply be said that the findings recorded by the learned Civil Judge, Senior Division, Thane and the reasons assigned for rejection of the application cannot be faulted, no interference is warranted. Hence, the Petition being sans merits, deserves to be rejected. Rule is discharged.

6. It is made clear that this Court has not touched the other aspects of the plaint except the proposed amendment and the prayer clauses therein. Needless to say that the interim relief granted by order dated 6.5.2014 stands vacated.

7. Office to communicate this order to the concerned Court forthwith.

(SMT.SADHANA S.JADHAV,J.)