

ISM

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

WRIT PETITION NO. 4674 OF 2013

Shr. Babasaheb Balu Upadhye and anotherPetitioners

V/s.

Smt. Prabhavati Appaso Upadhye and othersRespondents

Mr. N. J. Patil for the petitioners.

Mr. Makarand Kale I/b Mr. Yogesh Sankpal for respondent nos. 1 to 3.

CORAM : NITIN W. SAMBRE, J.

DATE : 27th JUNE, 2018.

P.C.

Heard the learned counsel for the petitioner/original plaintiff in R.C.S. No. 205 of 2010. The order of rejection of amendment of the plaint impugned in the present petition is passed by Civil Judge Junior Division, Ichalkaranji on 18/01/2012. The petitioner sought amendment to the extent of granting mandatory order of sale deed in his favour pursuant to a Decree passed in earlier compromise suit for partition being R.C.S. no. 57 of 1993.

2 The respondent defendant has come out with a plea that they will not act on the registered agreement of sale dated 06/07/2008 as is reflected in para 4 (a) of the order impugned. Since the respondents have come out with a plea that they are no more interested in selling the property, in my opinion, the amendment as sought for need not be gone into at this stage of the proceedings. It is worth to observe that in case if the respondents act in breach of compromise Decree passed in R.C.S. no. 57 of 1993, the petitioner will have every right either to take out the execution proceedings *qua* the compromise Decree referred supra or to take out such other proceedings passed on the rights crystallized in favour of petitioner vide Decree passed in R.C.S. no. 57 of 1993.

3 With above observations, petition stands disposed of.

4 Needless to clarify that this Court has not examined the merits of the matter.

[NITIN W. SAMBRE, J.]