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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2520 OF 2015

Smt. Lalita Pachakshari Kinikar @ Swami ..Petitioner.

V/s.

Rajshekhar Panchakshari Kinikar @ Swami

& Ors.

..Respondents.

Mr.Rajashekar S.Alange for the petitioner.

CORAM: NITIN W.SAMBRE, J.

DATE : JULY 27, 2018

Srikrishna
Ananth
Sharma

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Srikrishna Ananth Sharma
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P.C.:-

In a suit for preemption, subsequent purchaser defendant no.1 claims to have purchased the property from defendant Nos.2 and 3. Keeping in mind that the original owners are defendant Nos.2 and 3 relatives of the said petitioner/plaintiff, an application Exhibit-74 in Regular Civil Suit No.98/2007 for amendment came to be moved, which is rejected by the order impugned dated January 21, 2015.

2. Though served, after notice is ordered by this Court, none appears for the respondents-defendants in the present petition.

3. The fact remains that the suit is at an initial stage and the trial in the suit is yet to commence.

4. The main prayer in the plaint appears to be based upon the principles of Preemptive Rights and as such, the prayer is sought to be added, by way of amendment in the plaint, to allow defendant Nos.2 and 3 as parties to the sale deed if to be executed, if the suit for preemption is to be decreed.

5. In my opinion, the amendment sought does not change the nature of dispute in the suit before the trial Court.

6. That being so, the order impugned, in my opinion, is not sustainable and the petition needs to be allowed.

7. The impugned order dated January 21, 2015 is hereby quashed and set aside. Application Exhibit 74 for amendment of plaint is allowed subject to payment of costs of Rs.3,500/- to be deposited before the trial Court within a period of six weeks from today. Respondent Nos.1 to 3 will be entitled to withdraw the said amount. The payment of costs shall be condition precedent for carrying out the amendment.

8. The petition stands allowed in above terms.

(NITIN W.SAMBRE, J.)