

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6342 OF 2017

Sou Ranjana Vilas Patil

... Petitioner

v/s

Smt Dadu Shankar Lad

... Respondent

Mr Abhijit M. Adagule for Petitioner.

Mr Pradeep D. Dalvi for Respondent.

CORAM : B.P. COLABAWALLA J.

DATE : 29TH NOVEMBER, 2018.

P.C. :-

1. This Writ Petition has been filed seeking to challenge the order dated 21st April 2017 passed below Exh.25 in R.C.A. No.158 of 2016. This application (Exh.25) was an application filed on behalf of the Appellant (original Plaintiff) under Order 6 Rule 17 of the C.P.C. for amendment of the plaint. This amendment was sought on the ground that after the Plaintiff's Suit was dismissed and the Appeal was filed from such dismissal, the original Plaintiff was forcibly and without following due process of law, dispossessed by the Defendant from the suit property on 1st September 2016. It was in the light of this subsequent development that the application for

amendment was made. After hearing the respective parties, the Appellate Court, by the impugned order, allowed the application for amendment and directed the Appellant to carry out the amendment within 14 days from the date of the order. It is this order which is under challenge before me.

2. I have heard the learned counsel appearing on behalf of the Petitioner (original Defendant) as well as the learned counsel for the Respondent (original Plaintiff). I do not think that there is any perversity in the order passed by the Appellate Court requiring my interference under Article 227 of the Constitution of India. It is not in dispute that the Plaintiff had filed R.C.S. No.78 of 2013 for the relief of perpetual injunction and it was dismissed on 27th April 2016. This dismissal was challenged before the Appellate Court by filing R.C.A. No.158 of 2016. It is the case of the Appellant that it was during the pendency of this Appeal, that the Defendant forcibly dispossessed the Appellant from the suit property on 1st September 2016. It was the case of the Defendant that the Plaintiff was never in possession and therefore, could not have been dispossessed on 1st September 2016. It is in these circumstances, that the amendment application was filed and allowed.

3. Considering the subsequent developments, I do not think

that the impugned order suffers from any perversity and/or is vitiated by any error on the face of the record requiring my interference under Article 227 of the Constitution of India.

4. In view of the foregoing discussion, I do not find any merit in this Writ Petition. It is accordingly dismissed. However, there shall be no order as to costs.

(B.P. COLABAWALLA J.)