

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.6839 OF 2018

Chandrakant Shankar Mali	]	Petitioner
Vs.		
Rangrao Krishna Mali and others.	]	Respondents

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Mr. V.B. Rajure, learned Counsel for the Petitioner.
Mr. Nikhil N. Pawar, learned Counsel for the Respondents.

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CORAM : R.G. KETKAR, J.

DATE : 14th FEBRUARY, 2019.

P.C.

Not on board. At the request of Mr. Rajure, taken up in the production board.

2. Heard Mr. Rajure, learned Counsel for the petitioners and Mr. Pawar, learned Counsel for the respondents.

3. As the regular Court presided over by the Hon'ble Mr. Justice K.K. Tated is not available today for judicial work, Mr. Rajure has moved this Court as per the administrative order passed by the Hon'ble the Chief Justice.

4. By this Petition under Article 227 of the Constitution of India, the petitioner hereinafter referred to as defendant No.7 & D2(B) has challenged the order dated 22nd December, 2017 passed by the learned Civil Judge (Junior Division) Peth, Vadgaon below Exhibit 134 in R.C.S. No.132 of 2005. By that order, the learned trial Judge allowed the application made by the plaintiff under Order-VI, Rule-17 of the Code of Civil Procedure, 1908 (for short 'C.P.C')

for amending the plaint subject to payment of costs of Rs.3,000/- to the defendants. The learned trial Judge also made it clear that amendment with respect to relief of declarations of sale deed not binding shall not relate back to the date of the suit and the said relief shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed i.e 13th August, 20015.

5. Mr. Rajure submitted that the learned trial Judge was not justified in allowing the application as proposed amendment is barred by limitation. He submitted that Petition requires consideration.

6. On the other hand, Mr. Pawar relied on the decision in **Bhimrao Laxman Kamble (since deceased) through his L.Rs. Sharada Bhimrao Kamble Vs. Annaso Dhondiram Manole, 2018 (2) Mh. L. J, 276** as also the decision of the Apex Court in **Abdul Rehman Vs. Mohd. Ruldu, (2012) 11 Supreme Court Cases 341**. He submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, while allowing the application for amendment, the learned trial Judge has made it clear that the amendment pertaining to relief of declarations of sale deed not binding will not relate back to the date of the suit and the said relief shall be deemed to have been brought before the Court on 13th August, 20015 when the application for amendment was made.

8. In view thereof and for the reasons given in the impugned order, no case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed.

9. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

[R.G. KETKAR, J.]