

DDR

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

WRIT PETITION NO. 7851 OF 2018

Shree Shrestha Sevasharam (Ratnagiri)

Mumbai & ors.

..Petitioners

vs.

Dayanand Vishnu Samant (since deceased)

through his heirs & Lrs. & ors.

..Respondents

....

Shri S.A. Sawant a/w. Shri H.S. Kadam i/b. Shri Deshmukh for
petitioners.

Shri P.M. Arjunwadkar for respondent No.3.

....

CORAM : M.S.KARNIK, J.

DATE : 26th SEPTEMBER, 2019

P.C. :

Heard learned counsel for the petitioners.

2. The petitioners are the original plaintiffs. The plaintiff No.1 is Shree Shrestha Sevasharam (Ratnagiri) Mumbai Trust. The suit is filed for a declaration that the plaintiffs are the owners of the suit property. Further relief is sought that defendants have no concern with the suit property. The plaintiffs

also prayed for direction to the defendants that after removing all the obstructions and objections vacant and peaceful possession of the suit property be handed over to the plaintiffs. Further reliefs in the nature of furnishing accounts and appointment of the Court Commissioner is sought. The trial Court by the judgment and decree dated 5/1/2015 dismissed the suit.

3. The plaintiffs filed the Appeal before the District Judge, Ratnagiri. During the course of the hearing of the Appeal on 5/2/2018 a detailed application was filed by the Appellant under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure for amendment of the Plaint. The sum and substance of the amendment is that the defendants have locked the entrance gate. By the amendment the plaintiffs wanted to bring on record the subsequent events that the devotees are regularly performing religious worship in the temple even during the subsistence of the Suit and Appeal. The Appellate Court rejected the said application.

4. Learned counsel for the appellant submitted that the plaintiffs only wanted to bring on record the subsequent events. He submits that the defendants can always file their written statement to the proposed amendment. According to learned counsel these being subsequent events there was no reason why the application for amendment does not deserve to be allowed. He would further submit that the Apex Court time and again has held that the Courts should adopt a liberal approach in the matter of grant of amendment. According to him, the nature of the suit will not change if the amendment is allowed. It is the contention that now the defendants are virtually restraining the devotees from entering into the temple and therefore these facts are necessary to be brought on record by way of amendment.

5. Learned counsel for the respondents supported the impugned order.

6. I have gone through the order passed by the Appellate Court. The suit is filed by the plaintiffs for declaration that they are the owners of the suit property. Further reliefs are

claimed that vacant and peaceful possession of the suit property be handed over to the plaintiffs by the defendants after removing all the obstructions and objections. The suit is also for maintenance of the accounts. This presupposes that the plaintiffs proceeded on the footing that it is the defendants who are in possession but the claim of rightful ownership and possession is that of the plaintiffs. This being the position the events in the nature of the subsequent events which is sought to be brought on record is hardly material to the issues involved for deciding the plaintiffs' case.

7. It is the case of the plaintiffs that the devotees are being obstructed from worshipping at the temple. It is pointed out by learned counsel for the respondents that already by an interim order the Appellate Court has permitted the devotees to worship at the temple by directing the lock to be removed. The plaintiffs are always at the liberty to make an appropriate application to the Appellate Court for permitting the devotees to worship at the temple or take such proceedings as may be

permissible if the interim order passed by Appellate Court is breached. If such an application is made the same shall be considered by the Appellate Court on its own merits.

8. Subject to what is observed above, the Petition is rejected.

9. Needless to mention that Appeal shall be heard by the Appellate Court on its own merits without being influenced by any observations made by me in this order.

(M.S.KARNIK, J.)