

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4709 OF 2018

Annaso R. Patil .. Petitioner
vs.
The State of Maharashtra and ors. .. Respondents

Mr. S.S. Koregave for the Petitioner.
Mr. R.P. Kadam, AGP for Respondent Nos.1,2 and 4
Mr. P.D. Pise for Respondent No.3.

CORAM : M. S. SONAK, J.
DATE : 27 MARCH 2019.

P.C. :-

1] Heard Mr. Koregave, learned counsel for the petitioner and Mr. P.D. Pise, learned counsel for respondent No.3.

2] The challenge in this petition is to the order dated 2nd January 2018 by which the Appeal Court has declined the petitioner leave to amend his plaint.

3] Mr. Koregave, learned counsel for the petitioner, submits that an appeal is a continuation of suit. He submits that the construction of the temple in question was undertaken during pendency of the suit as well as the appeal. He submits that since this is a subsequent development, the petitioner-plaintiff should have been

permitted to amend the plaint even at the appellate stage. He submits that there will be no change in the basic nature of the suit. He relies upon ***Sampath Kumar vs. Ayyakannu – 2002 (7) SCC 559*** and ***Ragu Thilak D. John vs. S. Rayappan and ors – (2001) 2 SCC 472*** in support of his contentions.

4] Mr. Pise, learned counsel for respondent No.3, defends the impugned order on the basis of reasoning recorded therein.

5] In the present case, learned Appeal Court has noted that the construction of the temple in question was completed during pendency of the suit. There was no application made in the suit seeking leave to amend. At the belated stage, only in exceptional cases, leave can be granted to amend. No such exceptional case is made out.

6] The decision in case of *Sampath Kumar (supra)*, dealt with the case where the plaintiff, even before commencement of the trial applied for amendment seeking declaration of title

and delivery of possession. In these circumstances, the Hon'ble Apex Court held that there was no change in the basic structure of the suit and therefore, the amendment could have been allowed by imposition of costs. The fact situation in the present case is not at all comparable to the fact situation in *Sampath Kumar (supra)*. Similarly, in *Ragu Thilak D. John (supra)*, the amendment was applied for during pendency of the suit and the Hon'ble Apex Court held that there was no question of change of basic structure of the suit. Again, even this decision, can be of no assistance to the petitioner.

7] The Appeal Court in the present case, has applied the correct principles and exercised discretion in a fair manner. There is no case made out to warrant interference. Accordingly, this petition is liable to be dismissed and is hereby dismissed. However, all contentions of the petitioner and remedies in relation to the alleged construction are kept open.

(M. S. SONAK, J.)