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

WRIT PETITION NO. 3899 OF 2019

Sachin Dnyanoba Wakadkar & anr. ..Petitioners

vs.

Dnyanoba Vithoba Wakadkar & ors. ..Respondents.

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Shri M.S. Lagu i/b. Shri K.A, Dhavle for petitioners.

Shri S.R. Nargolkar a/w. Mr. Arjun Kadam for respondent No.15.

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CORAM : M.S.KARNIK, J.

DATE : 26th SEPTEMBER, 2019

P.C. :

Heard learned counsel for the petitioners.

2. None for respondent Nos. 1 to 14 though they are duly served in compliance with the order passed by this Court on 29/8/2019.

3. Shri Nargolkar appears for respondent No.15 – The Seva Vikas Co-op. Bank Ltd.

4. The petitioners are the original plaintiffs. The suit is filed for partition and separate possession and cancellation of the sale deed executed by respondent No.1 in favour of

respondent No. 12. Further they have challenged the sale deed dated 30/12/2009 executed by respondent No.1 in favour of respondent No.12.

5. The plaintiffs filed an application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the Plaint. It is the contention of the plaintiffs that the property which is the subject matter of sale deed is encumbered or mortgaged by respondent Nos. 12 to 14 with respondent No.15 – Bank.

6. By the proposed amendment the plaintiffs wanted to bring on record the averments regarding encumbrance/mortgage by respondent Nos. 12 to 14 with respondent No.15 - Bank. The trial Court rejected the application for amendment on the ground that the plaintiffs have not given details about the alleged encumbrance or mortgage. It is further held that the plaintiffs have registered lis pendense with Sub-Registrar Haveli, hence, no prejudice would be caused to the plaintiffs. The application is rejected by the trial Court.

7. Respondent Nos. 1 to 14 have not appeared despite service.

8. Learned counsel for respondent No. 15 opposed this Petition. He supported the order passed by the trial Court. He submitted that the averments made in the proposed application are absolutely vague and no details of encumbrance or mortgage are provided for. He further would submit that as lis pendence has already been registered with Sub-Registrar and as rightly observed by the trial Court, no prejudice would be caused to the plaintiffs if the order passed by the trial Court stands.

9. I have gone through the order passed by the trial Court.

10. The trial Court has framed the issues. Before recording the evidence the application Exhibit 128 is moved by the plaintiffs for amendment of the Plaint. By way of the proposed amendment the plaintiffs only wanted to bring on

record the subsequent events regarding encumbrance or mortgage of the suit property which is the subject matter of the suit in favour of defendant No.15 by defendant Nos.12 to 14.

11. In my view the application Exhibit 128 deserves to be allowed. The plaintiffs only wanted to bring on record the averments regarding encumbrance or mortgage by respondent Nos. 12 to 14 with respondent No.15 – Bank which is in the nature of a consequential amendment as the nature of suit does not change. There is no contest by defendant Nos. 1 to 14 to this Petition. The Petition therefore deserves to be allowed.

12. The impugned order is set aside.

13. Application Exhibit 128 is allowed. Amendment to be carried out within a period of 2 weeks from the date of the uploading of the order.

14. With these observations, the Petition is disposed of.

(M.S.KARNIK, J.)