

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8261 OF 2015

Ms. Sheela Suresh Nimkar

Age : 69 yrs, Occ : Retired

5, Shubhada Society,

Sahakar Road, Vile Parle (E),

Mumbai-57

Temporary Address :

503, A Wing, Gokul Crescent

Dongri Lane No.2,

Next to Bank of India,

Brindavan Society,

Andheri (E), Mumbai-69

.....Petitioner

V/s.

Mr. Vilas Vishnu Chansarkar ,

Age : 65 years, Occ : Retired

Res. At Flat No.7, Vandana Society,

2nd Floor, Bhusari Colony,

Opp. Kothrud Bus Depot,

Paud Road, Kothrud,

Pune-411 038.

....Respondent

* * * *

Mr. Uday Warunjikar, Advocate for the petitioner.

Mr. Hassnain Kazi Sayyed a/w. Ms. Shraddha Vavhal,
Advocate for the respondent.

CORAM : SANDEEP K. SHINDE, J.

Friday, 5th July, 2019.

ORAL JUDGMENT :

1. Petitioner's application under Order 6 Rule 17 Civil Procedure Code ("CPC" for short) has been rejected by the Joint Civil Judge Senior Division, Pune on 10th June, 2015 having found, that the plaintiff was just seeking to amplify and reproduce pleadings in the plaint and amendment proposed was not necessary for the purpose of determining the question in controversy. It is against the order dated 10th June, 2015 the plaintiff in Special Civil Suit No. 1281 of 2014 have filed petition under Article 227 of the Constitution of India.

2. Indisputably, the plaintiff sold the suit flat to her parents by registered sale-deed dated 5th June, 2006 for consideration of Rs.14,00,000/- and it is her case that parents had agreed to execute deed of re-

conveyance on demise of any of them. She relied on one of the Clauses in the sale-deed. It is the plaintiff's case that, her mother died on 13th November, 2010 and father on 23rd July, 2014.

3. Upon reading the averments in paras-4, 6 and 10, it is very certain that the plaintiff was aware of the fact that her father had executed a Will in favour of defendant-her brother. In para no.6 of the plaint, she says

“father was unable to sign any document since many years. The defendant tried to get Will of his father executed and that too, against the wishes of his father.”

In paragraph no.10 of the plaint, she says,

“The deceased purchasers have not right to create any encumbrance in respect of the said flat by executing testamentary documents....”

. Thus, from the pleadings it is obvious that, the plaintiff knew that her father had executed a Will which she disputes in so many words. In view of this, the plaintiff ought to have sought a declaration that Will executed by her father, is not binding on her when the suit was instituted. Even otherwise, no prejudice would be caused to the plaintiff as this material proposition of fact, asserted and affirmed by her is denied by the defendant; which gives rise to a distinct issue. In view of this fact, the learned trial Judge by a reasoned order, correctly declined her request to amend the plaint. In my view, the order impugned is correct and proper and no interference is called for.

4. The Writ Petition is therefore dismissed and disposed of accordingly.

(SANDEEP K. SHINDE, J)