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

WRIT PETITION NO. 10206 OF 2018

Sadanand Bhanudas More & ors. ..Petitioners
vs.
Sudhesh Kashinath Bhise & ors. ..Respondents

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Shri P.P. Kulkarni for petitioners.
Shri A.M. Kulkarni for respondents.

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CORAM : M.S.KARNIK, J.

DATE : 3rd SEPTEMBER, 2019

P.C. :

Heard learned counsel for the petitioners.

2. The petitioners are the original plaintiffs. The plaintiffs filed Special Civil Suit No. 18 of 2013 before the trial Court with a prayer that the sale deed dated 2nd March, 2013 executed in favour of defendant Nos.1 to 4 by defendant No.5 be cancelled as the same is illegal. Further declaration is sought that defendant No.5 is not the owner of the suit property. Relief of injunction is sought.

3. Plaintiff No. 3 claims to be wife of Bhanudas. During the lifetime of plaintiff No.3 the said Bhanudas married defendant No.5 – Shilabai.

4. The defendants filed the written statement and denied the claim of the plaintiffs. In the written statement it is the stand of the defendant Nos. 1 to 4 that the suit property in question has devolved upon the plaintiffs and defendant No.5 pursuant to Will executed by Bhanudas. In fact the plaintiffs and defendant No.5 had filed Probate proceedings and by an order dated 12/2/1998 the Probate was issued in favour of the plaintiffs and defendant No.5 and necessary entries are also made in the revenue records.

5. By the application filed below Exhibit 93, the plaintiffs sought amendment of the Plaint. They wanted to incorporate paragraph 9(A) after paragraph 9 specifying the details about 'defendant No.5 not being legally wedded wife of Bhanudas and therefore the self acquired property of Bhanudas

cannot devolve upon defendant No.5 on the basis of Will dated 10/5/1978 executed by Bhanudas'. The averments regarding the arrangements made under the Will dated 10/5/1978 in favour of defendant No.5 are sought to be declared as not binding on the plaintiffs.

6. The issues are framed. The trial Court rejected the said application on the ground that in the Plaint the plaintiffs have specifically mentioned that defendant No.5 cannot claim the status of wife of late Bhanudas therefore by the proposed amendment they are seeking to incorporate the same contention in the Plaint which in the opinion of the trial Court is not proper. The amendment application is also rejected on the ground that the scope of the present suit is limited to the extent whether defendant Nos. 1 to 4 have acquired title of suit property from defendant No.5.

7. I find from the proposed amendment that now the plaintiffs want to plead that Bhanudas had no right to bequeath

his self acquired property in favour of defendant No.5 by a Will. However, I find that this case is pleaded only after the written statement is filed by the defendants stating the details about the Probate issued on 12/2/1998 in favour of the plaintiffs and defendant No.5 in Civil Misc. Application No. 132 of 1995 by the Competent Court. Even the necessary entries on this Probate issued in favour of the plaintiffs and defendant No.5 are taken in the revenue records. There is substance in the contention of learned counsel for respondents that by doing so, the plaintiffs wanted to get over the Probate issued on 12/2/1998 which the plaintiffs themselves had obtained on the basis of Will executed by Bhanudas.

8. In these circumstances, I do not find this is to be a fit case to interfere with the order of the trial Court, more so when the Plaint is sought to be amended after the issues have been framed.

9. The Petition is rejected with no order as to costs.

10. Needless to mention that the observations made by me are for the limited purpose of dealing with the amendment application and the trial Court will not be influenced by any observations made by me while deciding the suit on its own merits.

(M.S.KARNIK, J.)