

Anand

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

WRIT PETITION NO. 12306 OF 2017

Smt. Parvati Shankar Jadhav & ors. .Petitioners

Vs.

Sou. Vaishnavi Sujit Nimbalkar .Respondent

Mr. A. M. Adagule, Advocate, for the Petitioners

Mr. B. D. Joshi, Advocate, for the Respondent

CORAM : REVATI MOHITE DERE, J.

DATE : 11.02.2020

P. C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioners have impugned the order dated 05.08.2017 passed by the learned 2nd Jt. C. J. S. D., Kolhapur below Exh. 79 in Special Civil Suit No. 61 of 2013, by which the Respondent (Original Plaintiff)'s Application seeking amendment of the plaint was allowed.

3. Learned counsel for the Petitioners submits that the amendment which was allowed changes the nature of the suit and as such, is not permissible. He further submits that by the proposed amendment, additional cause of action is sought to be introduced which was not in the earlier plaint. According to the learned counsel, the trial

Court has in two lines allowed the said Application without considering the Petitioners' submission that the proposed amendment changed the nature of the suit, thus, causing prejudice to the other side.

4. Learned counsel for the Respondent (Original Plaintiff) opposed the Petition. He submitted that no interference is warranted in the impugned order. Learned counsel for the Respondent further submits that the said amendment was necessitated in view of the amendment allowed by the trial Court on an Application preferred by the Petitioner Nos. 9 & 10 for amending their Written Statement in July, 2017. He further submits that the impugned order allowing amendment has been given effect to and subsequently, the Petitioners have also filed their additional Written Statement. He submits that on the basis of the new amendment, the trial Court has also framed additional issues on 31.08.2019.

5. Perused the papers as well as the impugned order. The Respondent is the Original Plaintiff who has filed a suit as against the Petitioners (Original Defendants) challenging the Sale Deed executed between the Petitioner Nos. 1 to 8 and the Petitioner Nos. 9 & 10. Admittedly, the Respondent is the daughter of the Petitioner No. 1 and the sister of the Petitioner Nos. 2 & 3. The Petitioner Nos. 3 & 8 are the Cousins of the Respondent and the Petitioner Nos. 9 & 10 are the

purchasers who have purchased the said property through the Petitioner Nos. 1 to 8. The Respondent, being aggrieved by the Sale Deed dated 05.08.2010 filed a suit, being Special Civil Suit No. 61 of 2013 in the Court of the learned C. J. S. D., Kolhapur. It appears that the Petitioners (Original Defendants) appeared in the said suit and filed their Written Statement. It appears that the Petitioner Nos. 9 & 10 filed an Application dated 16.06.2016 under O. VI, Rule 17 of the Code of Civil Procedure (for short 'C. P. C.') and sought amendment of their Written Statement. The said Application preferred by the Petitioner Nos. 9 & 10 was allowed by the trial Court vide order dated 17.07.2017. It appears that in view of certain averments made in the additional Written Statement by the Petitioner Nos. 9 & 10, the Respondent (Original Plaintiff) filed an Application seeking amendment of the plaint on 17.02.2017. The said Application was allowed and the Respondent (Original Plaintiff) was permitted to amend the plaint within 14 days. A perusal of the proposed amendment does not show that there is a change in the nature of the suit. It appears that the amendment was necessitated in view of the additional Written Statement filed by the Petitioner Nos. 9 & 10 in 2017. It appears that pursuant to the same, the Respondent (Original Plaintiff) learnt about certain additional details with respect to the transaction that had taken place, pursuant to which, the said amendment Application was filed by the Respondent (Original Plaintiff). The proposed amendment neither changes the relief claimed

by the Respondent (Original Plaintiff) nor the nature of the suit. The cause of action throughout is a Sale Deed dated 05.08.2010.

6. Considering the aforesaid, no interference is warranted in the impugned order dated 05.08.2017 passed by the learned 2nd Jt. C. J. S. D., Kolhapur below Exh. 79 in Special Civil Suit No. 61 of 2013. Even otherwise, the amendment has been carried out by the Respondent (Original Plaintiff), pursuant to which, even the Petitioners have filed their additional Written Statement and the trial Court has framed issues with respect to the said amendment.

7. Considering the same, no ground is made out for interference in the impugned order. Accordingly, the Petition is dismissed.

(REVATI MOHITE DERE, J.)