

Ingale

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

WRIT PETITION NO.11959 OF 2016

Raghunath Aappso Chougule .. Petitioner

vs.

Godawari @ Godabai Subhash Patil & ors. .. Respondents

Mr. Dilip B. Shinde, for Petitioner.

CORAM : M.S.KARNIK, J.

DATE : DECEMBER 8, 2021

P.C.:-

1. Heard learned Counsel for the petitioner. The petitioner is the original defendant no.1. The plaintiff had filed the Suit for partition, declaration and injunction. In the Suit as was filed, the stand was taken in the plaint that the plaintiff is in exclusive possession of the suit property. An application Exhibit 5 was filed for injunction. The petitioner-defendant no.1 filed written statement and a say. A contention was taken by the petitioner that it is the petitioner who is in exclusive possession of the suit property. The other contention raised was that in previously instituted Suit between the parties, there already was a

compromise decree passed and therefore the present Suit is not maintainable.

2. After the rejection of the Exhibit 5 application, even Misc. Civil Appeal against the order refusing temporary injunction is also dismissed. The plaintiff then filed an application Exhibit 62 under Order I Rule 10 and Order VI Rule 17 of the Code of Civil Procedure. The application for impleadment of defendants no. 6 to 8 and for amendment was opposed by the defendant no.1. The trial Court allowed the application for amendment. Learned Counsel for the petitioner submitted that as the previously instituted Suit resulted in compromise, it is not now open for the plaintiff to have instituted this Suit as the Suit itself is not maintainable. It is further contended that the impleadment of defendants No. 6 to 8 is not at all necessary. It is next contended that it is only after rejection of the application made by plaintiff for temporary injunction and resultant dismissal of the Misc. Civil Appeal that the application is filed for amendment. Learned Counsel contended that a new case is sought to be made out, in that now the stand is completely changed from the earlier one. The plaintiff had earlier taken a stand that she was in exclusive possession. The plaintiff by virtue of the amendment now wants to make out a case for joint possession. In the submission of

learned Counsel this is impermissible and it changes the nature of the Suit.

3. I have gone through the impugned order. In the Suit filed by the plaintiff, a relief is sought for declaration that decree passed in previously instituted Suit (compromise decree) is not binding on her. Moreover, the defendants no. 6 to 8 were parties to earlier Suit who are now sought to be impleaded and therefore the impleadment is sought, the defendants no. 6 to 8 being necessary parties. In my opinion, the Trial Court has correctly formed an opinion that amendment sought will not change the nature of the Suit. The plaintiff had earlier taken a stand that she is in exclusive possession and by way of amendment, she now wants to make out a case for joint possession. Considering the nature of the amendment and that the Suit is for partition, I do not find any error in the approach of the Trial Court so as to warrant interference in the exercise of writ jurisdiction.

4. Keeping all contentions open, including the contention that the present Suit is not maintainable in view of earlier decree, the writ petition stands rejected and the same is disposed of.

(M.S. KARNIK, J.)