

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2872 OF 2019**

Sandeep Nathu Jadhav Petitioner.

V/s

Bhimrao Kondiram Tilekar
and Anr. Respondents.

Mr. Nikhil Wadikar i/b Nandu V. Pawar for the Petitioner.

Mr. Prabhanjan Gujar for Respondent Nos. 1 and 2.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 16, 2021

P.C.:-

1] RCS No.379 of 20076 was preferred by the Petitioner/Appellant seeking a declaration that the suit property is duly redeemed and he is an owner and as such consequently entitled for possession of the same. The suit claim came to be dismissed vide judgment and order dated 2/1/2013. Petitioner feeling aggrieved preferred Regular Civil Appeal No.65 of 2013 in which application-Exhibit-19 came to be moved for amendment of plaint. Vide order impugned dated 29/8/2018, learned District Judge rejected the application/prayer for grant of amendment. As such, this Petition.

2] The learned Counsel for the Petitioner submits that the Petitioner has already created a foundation as regards existence of mortgage and that being so by way of amendment, he was justified in claiming his readiness and willingness to redeem the mortgage by repaying the mortgage money. Apart from above, he would submit that even if amendment is granted, same will be required to be proved by the Petitioner and that being so, court below has committed an error in not granting amendment at appellate stage.

3] Per contra, learned Counsel for the Respondent/Petitioner supports the order impugned and submits that Petition is liable to be dismissed.

4] Considered rival submissions.

5] If we appreciate the claim as was made in the plaint, same is for declaration that suit property is already free from mortgage and as a consequence thereof, Petitioner/Plaintiff is owner of the same and as such is entitled for possession and declaration is also sought that proceedings taken out in relation to suit property against the Petitioner

be declared as illegal. As such, the case of the Petitioner is that the suit property was already redeemed and free from mortgage.

6] By way of amendment, Petitioner is seeking addition of contradictory pleadings thereby setting up a new case that he was always ready and willing to pay the mortgage money, thereby releasing the property from the clutches of mortgage. The nature of amendment as is sought to be carried out, that too at appellate stage, was a new case than what was sought to be canvassed by the Petitioner/Plaintiff in his plaint. That being so, it is not open for the Petitioner to insert altogether a new case at appellate stage by way of carrying out amendment in the plaint. That being so, no fault could be noticed with the order impugned in the Petition. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)