

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

Digitally
signed by
BALAJI
GOVINDRAO
PANCHAL
Date:
2022.03.14
11:57:57
+0530

WRIT PETITION NO.2994 OF 2009

Sou. Jayashree Deepak Kulkarni ..Petitioner

Versus

Shri. Chintaman Bhalchandra Shete and Ors. ..Respondents

Mr. Siddheshwar Biradar a/w Digvijay S. Kachare, for the Petitioner.
Mr. Hitesh P. Vyas, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 10th MARCH, 2022

PC.

1. Counsel for the petitioner is permitted to place his Vakalatnama on record.

2. Regular Civil Suit No.150 of 2007 was initiated by the petitioner/plaintiff for declaration that she is owner of the suit property and injunction not to deal with the suit property. In the said suit, petitioner took out an application Exh.53 for amendment of plaint which came to be rejected vide order impugned order dated 29th December, 2008. As such, this petition.

3. Submissions of learned counsel for the petitioner are, Court below has committed an error in rejecting prayer for amendment of plaint though such amendment is necessary for deciding the issue raised in the suit whereas Mr. Hitesh Vyas has

supported the order impugned, as according to him, the attempt on the part of the petitioner was to delay the suit proceedings as prayer for amendment was at all not genuine. He further submits that he has no further instructions in the matter.

4. I have appreciated the said submissions.

5. It appears that the Court below has instead of recording a finding as to whether the amendment needs to be granted or not has gone in observing that the amendment is not relevant.

6. The Court further considered that at the time of filing suit, the petitioner/plaintiff had knowledge about the document. As such, there is absence of due diligence on the part of the petitioner/plaintiff. As far as the aforesaid contentions are concerned, whether the trial in the suit has commenced or not is not considered by the court below. The suit remains stayed by order of this Court for last about 14 years on the ground that whether the amendment rejected is justified or not. The fact remains that claim in the suit is for declaration. In my opinion, the claim that petitioner is entitled to aforesaid amendment viz. proceedings as are referred to in paragraph 8 of the impugned order to be brought on record in plaint appears to be quite justified for deciding the claim raised in the suit. Even otherwise facts sought to be pleaded through said amendment are within knowledge of respondents.

7. That being so, order impugned dated 29th December, 2008 passed below Exh.53 is hereby quashed and set aside. The application Exh.53 for amendment of plaint is allowed subject to payment of cost of Rs.5,000/- to which the respondents will be entitled to withdraw.
8. Let the amount of Cost be deposited within a period of six weeks from today, subject to which the amendment is permitted to be carried out.
9. If the order is not complied with, the Court below shall proceed with the hearing of the suit, as if the order thereby rejecting the prayer for amendment shall hold the field.
10. The petition as such stands disposed of.

[NITIN W. SAMBRE, J.]