

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

WRIT PETITION 1418 OF 2019

Shri Adinath Ramu Khochage & Ors. ... Petitioners.

V/s.

Shri Shantinath Ramu Khochage & Ors. ... Respondents.

Mr. Vivek Vijay Salunke, Advocate for the Petitioners.

Mr. S. S. Koregave, Advocate i/by Mr. Sachin Keru Hande,
Advocate for Respondent 1.

CORAM : ROHIT B.DEO, J.

DATE : JULY 22, 2022

PC :

1. The petitioners are the defendants in Regular Civil Suit 342 of 2021 which is brought for decree of partition and separate possession.

2. In the suit, the plaintiff preferred an application seeking amendment of the plaint, which is allowed by the learned trial Judge vide order impugned dated 15.03.2018.

3. In brief, the plaintiff is permitted to incorporate challenge to sale deed dated 15.03.2017 executed by Mukund Anant Kulkarni in favour of Sanjay Rupachand Shah & others.

4. According to the plaintiff, the plaint, as originally filed, challenges the sale deed dated 21.05.2010 executed by defendant 2 in favour of Mr. Mukund Anant Kulkarni and during the pendency of the suit Mr. Mukund Anant Kulkarni further transferred the property to Shah couple, despite the registration of lis-pendence. The other amendment which the plaintiff proposed and the learned trial Judge has permitted is the addition of Mr. Mukund Anant Kulkarni and Shah couple as party defendants. As consequence, the additional relief the plaintiff proposed and is permitted is the revision of the suit valuation and payment of additional court fee.

5. The learned trial Judge has held that there is no change in the structure of the suit and that the amendment shall be effective from the date of the order and since the stage is recording of evidence of plaintiff on a preliminary issue, no prejudice is likely to be caused.

6. I see no error in the view taken by the learned trial Judge.

7. The challenge to the sale deed is certainly within limitation. Additional sale deed executed in favour of the Shah couple is during the pendency of the suit.

8. While learned counsel Mr. Salunke would invite my attention to paragraph 12 of the decision of the Supreme

Court in **Shiv Gopal Sah alias Shiv Gopal Sahu Vs. Sita Ram Saraugi & Ors.** [(2007) 14 Supreme Court Cases 120], to point out that the time-barred claim cannot be allowed and crystallized rights cannot be defeated. I fail to appreciate how the said decision is relevant in the context of the present case. I have noted the that challenge to the 2010 sale deed is already there in the original plaint. Insofar as the subsequent sale deed is concerned, the same is executed during the pendency of the suit. While allowing addition of Mr. Mukund Anant Kulkarni and Shah couple, the learned trial Judge has directed that their addition shall not relate back. The question of any crystallized rights etc., being defeated or any prejudice being occasioned, does not arise.

9. In any event, when the Petitioner, who is defendant 2, has lost share and interest in the property having transferred the same to Mr. Mukund Anant Kulkarni, who in turn has transferred it to Shah couple, it is not for the Petitioner to espouse the cause of the purchaser.

10. In this view of the matter, the order impugned is unexceptional and no interference in writ jurisdiction is necessary.

11. Petition is dismissed.

(ROHIT B. DEO, J.)