

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

WRIT PETITION NO.11142 OF 2014

- | | | |
|--|---|----------------|
| 1. Pushpa Sundarlal Babla @ Bhatia |] | |
| 2. Renu Narain Bhatia |] | |
| 3. Deepak Sundarlal Babla @ Bhatia |] | |
| 4. Rekha Rajesh Vasaiwalla |] | .. Petitioners |
| Vs. | | |
| 1(a). Reshma Lachhmandas Babla @ Bhatia |] | |
| 1(b). Hanuman Lachhmandas Babla @ Bhatia |] | |
| 2. Rajasthan Co-op. Housing Society Ltd., Mumbai |] | .. Respondents |

Mrs. Alpana Ghone, with Ms. Leena Mirasee and Mrs. Chhaya, i/by Shah & Sanghavi, for the Petitioners.

Mr. Anshul Anjarlekar, i/by Raval Shah & Co., for Respondent Nos.1(a) and 1(b).

CORAM : VALMIKI SA MENEZES, J.

DATE : 20TH DECEMBER, 2022.

P.C. :

1. Rule. Rule made returnable forthwith by consent of learned counsel for the parties.

2. The challenge in this Writ Petition is to an order dated 22nd September 2014 passed by the City Civil Court at Mumbai in Chamber Summons No.550 of 2014 in S.C. Suit No.106742 of 2006, partly allowing the application for amendment of the plaint. The challenge in the petition is restricted to the portion of the impugned order rejecting amendment sought to the plaint, as incorporated

in paragraphs 2 and 6 of the Schedule to the Chamber Summons.

3. Suit No.106742 of 2006 was filed before the City Civil Court at Mumbai for a declaration that an affidavit dated 19th March 1999 executed by Mr. Sunderlal Sobharam Babla @ Bhatia, who is since deceased, was null and void and of no legal effect and not binding on the plaintiffs, who are petitioners before this court. Apart from the relief of declaration, the plaintiffs also sought a mandatory injunction directing defendant no.2-Society in the Suit to rectify the records of the society to reflect the names of the plaintiffs as joint owners of the suit property and for an order of permanent injunction against the defendants from in any manner implementing or using the affidavit dated 19th March 1999, which the defendants claim operates as a bequest in their favour. In addition to these reliefs, the plaintiffs also sought a decree of damages in the sum of Rs.1 crore, which, upon the amendment, has been allowed by the impugned order and the plaintiffs were permitted to raise their claim to the extent of Rs.3,01,52,848/-; thus, requiring the Suit to be transferred to this court in view of the higher pecuniary jurisdiction.

4. Before issues were struck, the plaintiffs had moved Chamber Summons No.550 of 2014 in the said Suit for amendment of the plaint. The impugned order allowed the application partly, to incorporate amendments to the plaint in terms of paragraphs 7A, 7B and 7C and additional facts to be incorporated in paragraph 18 of the plaint. In addition, the impugned order allowed amendment of the prayer clauses in the plaint to incorporate prayer clauses (d-1), (d-2), (d-

3) and (d-4) after original prayer clause (d) in the plaint in terms of the Schedule to the Chamber Summons. The impugned order however rejects the Chamber Summons for amendment of the plaint insofar as amendment sought in paragraphs 2 and 6 of the Schedule to the Chamber Summons. It is to this extent that the order dated 22nd September 2014 is assailed in this petition filed under Article 227 of the Constitution of India. After service, the respondent nos.1(a) and 1(b) have filed an affidavit-in-reply opposing grant of relief of injunction.

5. I have heard learned counsel for the petitioners and learned counsel for respondent nos.1(a) and 1(b), who have contested the matter. I have gone through the record of the petitioners and the pleadings of the parties, which were produced in the form of a paper-book and tendered across the bar.

6. On a perusal of the impugned order dated 22nd September 2014, it appears that the trial court has arrived at a conclusion that the claim of the plaintiffs in the Suit was maintainable and amendment, which was sought, would not change the nature of the Suit. The trial court has also concluded that grant of the amendment sought would avoid multiplicity of proceedings and would not change the nature of the reliefs in the Suit. In fact, the trial court concludes that the application for amendment ought to be allowed; however, in the operative part of the order, it has directed the plaintiffs to carry out amendment only in terms of paragraphs 7(a) to 7(c) of the plaint and paragraph 4 of the Schedule with reference to paragraph 18 of the plaint and paragraph 5 of the Schedule with reference to prayer clauses of the plaint and has not

included grant of amendment as incorporated in paragraphs 2 and 6 of the Schedule to the Chamber Summons.

7. Considering that the conclusions arrived at by the trial court were in favour of grant of the entire amendment, as sought for in the Schedule to the Chamber Summons, there is no reason why the trial court has then restricted the operative part of the impugned order to the grant of amendment as sought for, save and except for those sought in paragraphs 2 and 6 of the said Schedule to the Chamber Summons. Even otherwise, considering the nature of the amendment sought in paragraphs 2 and 6 of the Schedule to the Chamber Summons, neither of these amendments would in any way change the nature of the Suit or take away any right of the defendants which may accrue during the pendency of the Suit. In this view of the matter, I am of the considered opinion that this is a fit case for exercising a supervisory jurisdiction of this court under Article 227 of the Constitution of India to correct this infirmity in the impugned order. Accordingly, I pass the following order :-

- (i) The impugned order dated 22nd September 2014, passed by the learned Judge of the City Civil Court at Bombay in Chamber Summons No.550 of 2014 in S.C. Suit No.106742 of 2006, to the extent it has not granted amendment to the plaint in terms of the amendment sought in paragraphs 2 and 6 of the Schedule to the Chamber Summons No.550 of 2014 is quashed and set aside.

- (ii) The plaintiffs-petitioners herein are permitted to amend the
plaint to include the amendments set out in paragraphs 2
and 6 of the Schedule to the Chamber Summons No.550 of
2014.
- (iii) Needless to state, the defendants are permitted to file an
additional written statement in answer to all the amendments
carried out to the plaint by virtue of Chamber Summons
No.550 of 2014.
- (iv) The petitioners-original plaintiffs shall carry out amendment
to the plaint in terms of this order within a period of four
weeks of receipt of the authenticated copy of this order.
- (v) An authenticated copy of this order be furnished to the
petitioners-original plaintiffs, who shall produce the same on
the record of High Court Suit No.2157 of 2006 and
incorporate amendment in the plaint, as directed.

8. Rule is made absolute in the above terms. Writ Petition is disposed of. No
order as to costs.

[VALMIKI SA MENEZES, J.]