

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12664 OF 2016

Jakkappa Chandram Susladi

... Petitioner

Versus

Kamalabai Namdev Kamale and Ors.

... Respondents

— —
Mr. Anand Vadgaonkar for the Petitioner.
— —

CORAM : SHARMILA U. DESHMUKH, J.

DATE : August 1, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the order dated 15th January, 2014 rejecting the petitioner's application for amendment of the plaint. RCS No.490 of 2011 has been instituted by the Petitioner seeking an order of perpetual injunction not to obstruct the right of way of the Petitioner.

3. Learned counsel appearing for the Petitioner submits that by the proposed amendment, the Petitioner sought to bring on record the subsequent development in the form of obstruction by the defendant despite order has been passed in favour of the Petitioner.

4. The order is of the year 2014 and this Court is informed that subsequently the trial has commenced. As such, in the year 2023, the clock cannot be turned back to relegate the parties at the stage of amendment of the pleadings, which would again require fresh evidence to be led.

5. Considering the provisions of Section 105 of the Code of Civil Procedure, 1908, in an appeal against the decree any error or illegality of the order can be taken as ground of objection in the appeal.

6. In view of the fact that the trial has already commenced and the proposed amendments were rejected on 14th January, 2014, this Court is not inclined to interfere in the impugned order. It is made clear that the rejection is only on the ground that the trial have been commenced in the suit of 2011 and this Court has not gone into the validity of the impugned order dated 15th January, 2014.

7. Writ Petition stands disposed of.

(Sharmila U. Deshmukh, J.)