

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

CIVIL WRIT PETITION NO.3951 OF 2023

Ramesh Udhav Bavar

..... Petitioner

V/s.

Charlie Dominic Dsouza (Decd) (deleted) & Ors.

..... Respondents

Mr. R. R. Tiwari for the Petitioner.

Mr. Vikas Kumar R. Srivastava for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 6th DECEMBER, 2023.

P.C.:

1. By this petition the challenge is to the order dated 9/12/2022 rejecting the petitioner's application for amendment of the memo of the appeal seeking incorporating certain additional grounds of challenge.

2. Mr. Tiwari, learned counsel appearing for the petitioner submits that his application under Order 41 Rule 27 of CPC for leading additional evidence has been allowed. However present Application filed below Exhibit 15 seeking incorporating additional grounds in the Appeal Memo has been rejected.

3. Mr. Srivastava, learned counsel appearing for the respondents submits that by the proposed amendment the petitioner seeks to challenge

the title of the landlord and in the previous litigation no such defence had been taken by the petitioner pointing out the findings in the impugned order, he submits that the proposed amendment is without merit.

4. By the impugned order the Appellate Court has gone into the merits of the amendment and has noted that in none of the previous litigation the appellant has challenged the title of the respondent as owner of the Suit premises. The Appellate Court took into consideration the admission of the appellant that he has admitted the respondent as the landlord and by placing reliance on Order 41 Rule 1(2) of CPC rejected the application. By the proposed amendment the petitioner seeks to incorporate additional grounds in his Appeal Memo. At the stage of deciding Application for amendment the merits of the amendment are not required to be gone into and the merits are to be adjudicated at the time of final arguments. The Appellate Court has done precisely that and has assessed the merits of the proposed amendment come to a finding that the petitioner in the previous litigation has not challenged the title of the respondents. It is for the petitioner to substantiate the grounds at the time of the final arguments and the addition of the grounds in the Memo of the Appeal cannot be disallowed. Further no prejudice is caused to the opposite party. Reliance placed on Order 41 Rule (1) (2) of CPC is misplaced as the same

only provides for the contents of the Memorandum of Appeal.

5. In that view of the matter, the impugned order dated 9/12/2021 is quashed and set aside. This Court is informed that the matter is fixed for hearing on 15/12/2023.

6. The amendment in the Appeal Memo be carried out by the petitioner on or before 12/12/2023.

7. Learned counsel appearing for the parties submit that they will proceed with the hearing of the appeal on 15/12/2023. As the Appeal is of the year 2016, the Appellate Court is requested to decide the same expeditiously.

8. Writ petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)