

Shabnoor

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

WRIT PETITION NO.6944 OF 2014

SHABNOOR
AYUB
PATHAN

Digitally signed by
SHABNOOR AYUB
PATHAN
Date: 2024.11.29
17:05:57 +0530

Sadashiv Vithal Kamble

... Petitioner

V/s.

Vithoba Bhima Waghmode (Deceased)

& Ors.

... Respondents

Mr. Ajit M. Savagave for petitioner.

Mr. Dilip Shinde for respondent.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 29, 2024

P.C.:

1. The original defendants in a suit for partition are challenging the order passed by the Appellate Court allowing the plaintiffs' application under Order 1, Rule 10 of the Code of Civil Procedure, 1908 to add co-sharers as party to the suit.

2. The Appellate Court has allowed such application mainly on the ground that this Court while disposing of Writ Petition No.5712 of 2007 granted liberty to the petitioner to file such application before the Appellate Court.

3. I have perused the order dated 20th September 2007 passed by this Court in Writ Petition No.5712 OF 2007. This Court refused to interfere with the impugned order and rejecting the application for amendment filed at the stage of arguments. This Court kept all questions raised in the petition open to be agitated at the time of

final hearing of the appeal. The said order does not have reference of liberty in favour of the respondents.

4. Moreover, grant of liberty by the Superior Court does not create any right in favour of party if otherwise such party is not entitled to enforce such right independently, if such right is not created either by contract or statute.

5. Learned Advocate for the petitioner invited my attention to the pursis filed by the respondents on 26th April 2014 whereby the respondents withdrew similar application filed by them during pendency of appeal. Withdrawal of earlier application seeking similar relief was unconditional. Therefore, it was not open for the respondents to file fresh application before the same Court for the same relief. In this case, the principle of analogy involves. Moreover, any order passed even at the stage of interlocutory order will also operate as *res judicata* and no change of circumstance is proved. The Appellate Court could not have allowed such application, the impugned order cannot be sustained. Hence, following order:

(a) The impugned order dated 3rd July 2014 passed by the District Judge – 1, Sangli below Exhibit 33 in Regular Civil Appeal No.61 of 2009 is rejected.

6. The writ petition stands disposed of in above terms. No order as to costs.

(AMIT BORKAR, J.)