

HARSHADA H. SAWANT  
(P.A.)

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

**WRIT PETITION NO.1367 OF 2024**

Manohar Krishna Yadav

.. Petitioner

**Versus**

Sushila Tukaram Salunkhe and Ors.

.. Respondents

- .....
- Mr. Satyajeet A. Rajeshirke a/w. Mr. Gautam R. Kulkarni,  
Advocates for Petitioner.
- .....

**CORAM : MILIND N. JADHAV, J.**

**DATE : FEBRUARY 05, 2024**

**P.C.:**

- 1.** Heard Mr. Rajeshirke, Advocate for Petitioner.
- 2.** The order impugned in the present Writ Petition is dated 07.11.2023 passed below Exhibit-117 in Regular Civil Suit No.51 of 2012. Application below Exhibit-117 is filed under Order VI Rule 17 of the Civil Procedure Code, 1908 (for short '**CPC**') by the Plaintiff seeking amendment to the suit plaint.
- 3.** Originally Regular Civil Suit No.51 of 2012 is filed for seeking partition and separate possession by Plaintiff. Amendment is preferred after 11 years in order to bring a subsequent purchaser on record as also for seeking further relief of declaration of the transaction as not binding upon the Plaintiff.
- 4.** Mr. Rajeshirke, learned Advocate appearing for the Petitioner who is Defendant No.3 before the Trial Court has drawn my

attention to Exhibit-H which is order dated 04.11.2019 passed by the learned Trial Court in an identical Application filed by the Plaintiff under Order VI Rule 17 of the CPC previously rejecting the said Application. He would submit that in view of rejection of the said Application, Application below Exhibit-117 was not maintainable, despite which it stands allowed.

**5.** He has fairly pointed out that in the Affidavit-in-Reply dated 07.11.2023 filed by Defendant No.3 to the Application below Exhibit-117, Defendant No.3 had failed to point out the aforementioned fact.

**6.** It is seen that order passed in Application filed below Exhibit-117 therefore does not take into account the earlier order dated 04.11.2019 passed by the learned Trial Court. If the said order is taken into account by the learned Trial Court then the Application filed below Exhibit-117 is clearly barred by the principles of *res judicata*.

**7.** Reasons given in paragraph No.6 of order dated 04.11.2019 are critical and they ought to have been considered by the learned Trial Court before passing any order in a similar Application filed below Exhibit-117. Hence order passed below Exhibit-117 is not sustainable. It ought to have considered the previous order. Rather either party ought to have placed the previous order before the Court.

**8.** Without expressing any opinion on the merits of the matter,

the impugned order dated 07.11.2023 passed in the Application filed below Exhibit-117 is therefore quashed and set aside. Application filed below Exhibit-117 is directed to be heard afresh by the learned Trial Court considering the previous order dated 04.11.2019 passed in Application filed below Exhibit-83 and after hearing both parties appropriate orders shall be passed in the said Application. Learned Trial Court is directed to dispose of adjudication of Application filed below Exhibit-117 within a period of four weeks from today positively without extending the hearing of the said Application any further.

**9.** All contentions of both the parties i.e. Plaintiff and Defendants are expressly kept open to be adjudicated by the learned Trial Court while considering Application filed below Exhibit-117 under Order VI Rule 17 of the CPC.

**10.** With the above directions, Writ Petition is disposed.

H. H. SAWANT

[ MILIND N. JADHAV, J. ]

HARSHADA  
HANUMANT  
SAWANT

Digitally signed by  
HARSHADA  
HANUMANT SAWANT  
Date: 2024.02.06  
14:15:08 +0530