

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7782 OF 2023

Ravindra Ramrao Dubal

.. Petitioner

Versus

Nathu Bapu Ingawale (since deceased)
through LRs. Laxmibai Nathuram Ingawale &
Ors.

.. Respondents

.....

- Mr. Dilip Bodake for Petitioner

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 24, 2024

P. C.:

1. Heard Mr. Bodake, learned Advocate for Petitioner.
2. This Writ Petition takes exception to the impugned order dated 04.03.2022 passed by the learned Trial Court in Application filed below Exh. 57 seeking amendment to the suit plaint.
3. Briefly stated the suit was filed in the year 2007 and proceeded with thereafter. Curiously the amendment sought is in respect of setting aside and challenge to the decree against the Plaintiff in a parallel suit which was filed by the Defendant prior in point of time in the year 1998 (RCS No. 138/1998) against the Plaintiff with respect to the same suit property and which was decreed. Mr. Bodake would fairly submit that RCS No. 138/1998 was decreed exparte. In that event it was open for the Petitioner to have challenged the exparte

order before the Appellate Court. Mr. Bodake would inform the Court that though the said challenge was maintained but the same was dismissed by the Appeal Court. There is no further challenge maintained to the decree passed in RCS No. 138/1998 and the said decree has now become final.

4. In the meanwhile, the present suit i.e. RCS No. 85/2007 proceeded and in view of the decree dated 22.03.2022 passed in RCS No. 138/1998, the Plaintiff in the present suit filed amendment Application seeking to include a relief to challenge the decree passed in RCS No. 138/1998.

5. I have heard Mr. Bodake and perused the impugned order. Learned Trial Court has returned cogent and reasoned findings for rejecting the Application primarily on the ground that the decree which is now sought to be challenged in the present suit proceedings was already challenged before the Appellate Court and the challenge had failed. That apart, the learned Trial Court has also held that if such a defence had to be taken it ought to have been taken in the first instance by filing an appropriate Application which was not done by Petitioner. It is clear that allowing such an amendment would not only change the nature of the suit proceedings but it is impermissible in law to allow and maintain such a challenge to a decree. I find no reason to interfere with the findings returned by the learned Trial Court in

paragraph No. 8 of the order dated 04.03.2022. The order deserves to be sustained. It is upheld. Resultantly, the Writ Petition fails.

6. In view of the above, Writ Petition is dismissed.

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[MILIND N. JADHAV, J.]

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