

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1202 OF 2007

Tukaram Sakharam Ghogale & Anr.....Petitioners.
V/s	
Bhikaji Arjun Jagtap & Ors.....Respondents.

Mr.Milind Parab, Adv. For the petitioner.

Mr.A.S.Khandeparkar i/by M/s.Khandeparkar & Associates, Adv. For
respondent Nos.1c, 2, 3A, 3B, 4 to 7, 8A, 8C and & 8D.

CORAM: A.P.DESHPANDE, J.

31/7/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

The present petitioners are the heirs of original plaintiff-Tukaram. Tukaram instituted a suit against Bhikaji for partition and separate possession by contending that Tukaram and Bhikaji were the tenants of the suit property and that the purchase price under section 32G was fixed in the name of Tukaram and Bhikaji so also a certificate under section 32M has been issued jointly in their name. The suit was initially filed only against one defendant i.e. Bhikaji and hence the plaint every where refers to the defendant without specifying the number. Defendant Nos. 2 to 7 came to be impleaded as party-defendants in the suit on 18.10.1994, in view of the fact that an appeal preferred by the defendants 2 to 7 was allowed and it came to be declared by Tenancy Appellate Court that the defendants 2 to 7 were also tenants in the suit land along with plaintiff and defendant No.1. I am informed that against the appellate order a revision has been filed and the same is pending

before the MRT/Divisional Commissioner.

2. In the above set of facts petitioner/plaintiff filed an application for amendment of the plaint seeking clarification that where ever there is mention of defendant the same be permitted to be amended so as to refer to defendant No.1. Thus it is obvious that the amendment propose;d to be carried out by the plaintiff is only clarificatory in nature and does not in any way prejudice the defendants. Strangely enough trial Court has rejected the amendment application filed by the petitioner at Ex.127 on two grounds that it came to be filed belatedly and allowing the amendment results in withdrawal of admission made in the plaint. As regards the delay suffice it to point out that the suit has not yet proceeded to stage beyond the issues and the decision in the suit would be depending upon the outcome of revision application filed by the plaintiff which is pending with MRT. As such on account of belated filing of application neither decision of the suit has been delayed nor are the defendants put to any inconvenience or hardship. About the other ground on which application is rejected viz. same tantamounts to withdrawal of admission, the same is really speaking, non-existing ground in as much as when the plaint was filed reference was made only to present defendant No.1. Other defendants are impleaded at later point of time hence at no stretch of imagination could it be said that the proposed amendment results in withdrawal of admission. The impugned order is patently illegal and thus in exercise of writ jurisdiction I proceed to quash and set aside the same. Writ petition is allowed. Amendment application filed by the petitioner at Ex.137 is allowed. Rule made absolute in above terms.

31.7.07