

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11660 OF 2014

DATTATRYA MURLIDHAR ZAREKAR AND OTHERS
VERSUS
MURLIDHAR MAHADU ZAREKAR AND OTHERS

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Advocate for Petitioners : Shri S.K.Adhikari

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CORAM : RAVINDRA V. GHUGE, J.

Dated: January 07, 2015

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PER COURT :-

1. The petitioners are the original plaintiffs in RCS No.634 of 2004. Recording of oral evidence to the extent of the petitioners has already been concluded. An application below Exhibit 161 is filed on 17.3.2012 seeking introduction of a claim and consequentially a prayer clause.
2. By the impugned order, dated 4.8.2014, the trial Court has rejected the application. The petitioners are aggrieved by this order.
3. The petitioners contend that their suit has been preferred for seeking partition and separate possession. Registered sale deeds Nos.2030 dated 25.2.1991 and 1824 dated 5.7.1994 and mutation entry Nos.4881 and 4882 dated 22.9.2000 are the events that have occurred prior to the institution of the suit in 2004.
4. By application Exhibit 156, the proposed amendment was as under:-

" Claim Clause:- That, it be declared that, registered sale deed No.2030 dated 25.2.1991 and regd. sale deed bearing No.1824 dated 5.7.1994 and M.E.No.4881 and 4882 dated 22.9.2000 are void, null and adjudge it as void and delivered it as set aside.

Prayer clause:- (A-1) - It be declared that, Regd. sale deed no.2030 dated 25.2.1991 and REgd. sale deed no.1824 dated 5.7.1994 and M.E.No.4881 and 4882 be declared as void, null and adjudge it as delivered it and as set aside."

5. The petitioners submit that the rejection of the said application would cause grave injustice and would close the doors of litigation on the petitioners. The cause of action was not likely to be altered. A new cause of action was not sought to be introduced. No loss or harm of any nature would be caused to the defendants, if the said amendment is allowed. It is, therefore, submitted that the impugned order is unsustainable in law since an amendment to the plaint can be carried out under Order VI Rule 17 of the CPC at any time during the pendency of the suit and even after the closing of evidence.

6. I have considered the submissions of the learned Advocate for the petitioners and have gone through the impugned order with his assistance. Prior to the suit, instituted in 2004, the above referred two registered sale deeds and the mutation entries were in existence. In the application Exhibit 156, filed by the petitioners, the petitioners have nowhere stated as to the circumstances which prevented the petitioners from seeking an amendment to the plaint before the trial commenced.

7. Similarly, there are no pleadings in the said application to indicate that the registration of the two registered sale deeds as well as the mutation entries were not within the knowledge of the petitioners. So also, it is nowhere pleaded in the said application that despite due diligence, the petitioners could not have sought an amendment for introducing the proposed paragraph prior to the date on which the application was made. In my view, these pleadings are material and germane to the request put forth by the petitioners, in the light of the proviso to Order VI Rule 17 of the CPC, which has been introduced in 2002.

8. I find from application Exhibit 156 that the justification for introducing the amendment is only that the defendants would not be surprised and no prejudice would be caused to the petitioners. By the proposed amendment, the petitioners seek quashing and setting aside of two registered sale deeds dated 25.2.1991 and 5.7.1994 coupled with the mutation entries, both dated 22.9.2000. The suit has been filed in the year 2004. Needless to state law of limitation would be attracted.

9. The trial Court has passed a detailed order, impugned in this petition. It has been concluded that the amendment is sought at the very end of the trial. It is also noted that the petitioners have not set out any circumstances which would indicate that they could not have moved the trial Court for seeking an amendment prior to March 2012. The fact is that the registered sale deeds and the mutation entries were all in existence when the suit was instituted and there is no contention by the petitioners

that they had no knowledge whatsoever of the said documents.

10. Having considered the narration of facts as recorded in brief hereinabove, in my view, this petition hangs on a law issue in relation to the jurisdiction of this Court. So far as the limitations of the writ and/or supervisory jurisdiction of this Court are concerned, a view has been taken by the 5 Judges Bench of the Supreme Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and others, [AIR 1964 SC 447]. The Apex Court has laid down the law under paragraph Nos. 7 and 8 of the said judgment, which read thus:-

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which

is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam ([1958] S.C.R. 1240.) and Kaushalya Devi v. Bachittar Singh.

8. *It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong*

in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of a the legal provision which is alleged to have been misconstrued or contravened.”

11. In this view of the matter, I do not find that the impugned order could be termed as erroneous or perverse or would cause grave injustice to the petitioners. In these circumstances, the petition is dismissed.

(RAVINDRA V. GHUGE, J.)

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