

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

WRIT PETITION NO.578 OF 2015

**Vilas Kushaba Raskar and ors. : Petitioners
versus
Rajendra Shashikant Bodake and ors. : Respondents.**

**Mr. R. N. Sanghavi for the Petitioners.
Mr. G S Godbole i/by Mr. Avinash B Patil for the Respondent Nos.1 to 3.**

**CORAM : R. M. SAVANT, J.
DATE : 10th February 2015**

P.C.

1 The writ jurisdiction of this court is invoked against the order dated 17/12/2014 passed by the learned Joint Civil Judge, Junior Division, Pune by which order the Application (Exhibit 149) and the Application (Exhibit 150) filed by the Petitioners herein i.e. the original Defendant Nos.1 to 4 came to be rejected.

2 In so far as the Application (Exhibit 149) is concerned, the said Application was filed seeking permission to lead further evidence, and in so far as the Application (Exhibit 150) is concerned, by the said Application the Defendant Nos.1 to 4 sought issuance of witness summons to the Credit Society of Employees of Premier Limited, Chinchwad, Pune.

3 The said Applications have been filed in Regular Civil Suit No.1837 of 2006. The said suit has been filed by the Respondent Nos.1 to 3 herein for partition and separate possession of their share in the suit property which is agricultural land bearing Survey No.44/A/11 which is described in Paragraph 1 of the plaint. It is the case of the Plaintiffs that the said land was the property of their grand-father one Kushaba Dhondiba Raskar and that the said property was purchased by their grand-father on 17/05/1985. It is further averred in the plaint that since the said property was the self acquired property of their grand-father Kushaba Dhondiba Raskar, it was entered in his name.

4 To the said averments of the Plaintiffs, the Defendant Nos.1 to 4 filed their written statement wherein in paragraph 3 they have accepted what has been averred by the Plaintiffs in the plaint. The Defendant Nos.1 to 4 have accepted that after the purchase on 17/05/1985 of the said property by their grand-father from one Vinayak Shankar Talwalkar, the same was entered in the name of their grand-father in the 7x12 extract. However, they denied the fact that the Plaintiffs who were the children of the sister of the Defendant No.1 are entitled to 50% share in the said property. The written statement filed by the Defendant Nos.1 to 4 therefore discloses that the factum of the property being purchased by their grand-father and thereafter standing in his name till his death was accepted by the Defendant Nos.1 to 4.

5 It seems that the Plaintiffs applied for amendment of the plaint so as to refer to proceedings being Regular Civil Suit No.2052 of 1977 and the compromise entered therein which was in respect of the house property No.165 which was also belonging to their grand-father i.e. Kushaba Dhondiba Raskar. This amendment it seems was required to be carried out in view of the fact that the Defendant Nos.1 to 4 had taken an objection to the maintainability of the suit on the ground that the said property being House No.165 was not brought in the common hotch-potch. The Defendant Nos.1 to 4 filed their additional written statement to the amended plaint. The Defendant Nos.1 to 4 dealt with the paragraph which was incorporated in the plaint i.e. paragraph 2A by way of the said amendment which was allowed. The factum of the suit being Regular Civil Suit No.2052 of 1977 being compromised was disputed by the Defendant Nos.1 to 4, however, the Defendant Nos.1 to 4 accepted the fact that the sale deed came to be executed pursuant to the said compromise.

6 What is pertinent to note in so far as the additional written statement filed by the Defendant Nos.1 to 4 is concerned is that in the said additional written statement, the stand is now sought to be taken by the Defendant Nos.1 to 4 which is to the effect that the suit property has been purchased by the Defendant No.1 from his own income in the name of his father i.e. Kushaba Dhondiba Raskar. Hence in the additional written

statement, a stand diametrically opposite to the stand taken in the original written statement which was to the effect that the suit property was purchased by the said Kushaba Dhondiba Raskar and standing in his name in the 7x12 extract is taken. It seems that recording of evidence of the Defendant Nos.1 to 4 was completed and since on 9/10/2014 none had appeared on behalf of the Defendant Nos.1 to 4 in the Trial Court, that the evidence of the Defendant Nos.1 to 4 came to be closed. It is thereafter that the Application (Exhibit 149) for being permitted to lead further evidence, and the Application (Exhibit 150) for issuance of witness summons to the Credit Society of the Employees of Premier Ltd, Chinchwad, Pune came to be filed.

7 The Trial Court rejected the said Applications on the ground that the Defendant Nos.1 to 4 cannot be allowed to lead evidence in respect of the stand in the additional written statement which is diametrically opposite to the stand taken in the original written statement, as the Defendant Nos.1 to 4 have not taken recourse to Order VI Rule 17 of the Code of Civil Procedure for amendment of the original Written Statement. The Trial Court has accordingly rejected the both the Applications (Exhibits 149 and 150).

8 In my view, having regard to the reasons on the basis of which the Applications (Exhibits 149 and 150) have been rejected, the interference of this court in its writ jurisdiction is not warranted. The above Writ Petition is

accordingly dismissed. Needless to state that the suit in question would be tried on its own merits and in accordance with law.

[R.M.SAVANT, J]