

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

WRIT PETITION NO.3727 OF 2013

Malleshi Gangaram Sonkamble

.. Petitioner

Versus

Shri. Mohan Jagannath Sonkamble and others

.. Respondents

Ms. Monali Patil i/by Shri. A. B. Tajane, for the Petitioner.

Ms. Geeta Mulekar, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 23rd OCTOBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 27.02.2013 passed by the Learned 12th Joint Civil Judge Junior Division, Solapur, by which order the application Exh.54 filed by the Petitioner/original Defendant for amendment of the Written Statement came to be rejected. The suit in question being Regular Suit No.198 of 2011 has been filed for a declaration that the Will Deed executed by the father of the Plaintiff Nos.1 and 2 and the husband of the Plaintiff No.3 in favour of the Defendant who is the brother of the father of the Plaintiff is null and void.

2. The Defendant filed his Written Statement on 16.08.2011. In

the suit issues have been framed and the trial has commenced in as much as the PW-1 is under cross-examination by the Defendant. It is at the said stage that the Defendant sought to amend his Written Statement so as to incorporate paragraph Nos.9(a), 9(b), 9(c), 9(d), 9(e), 9(f), 9(g), 9(h) and 9(i) in the Written Statement. The said paragraphs contain averments which are dating back to the year 1975 and revolving around how the Plaintiff was brought up by the Defendant and how the Defendant looked after the father of the Plaintiff i.e. one Jagannath Sonkamble. The said amendment was sought to be justified on the ground that the same is clarificatory in nature and does not change the defence of the Defendant. The Trial Court considering the stage at which the suit was namely the PW.-1 was under cross-examination of the Defendant held that having regard to the proviso to Order VI Rule 17 the due diligence test would have to be satisfied by the Defendant, and considered the application on the said basis. The Trial Court having regard to the fact that the facts which are now sought to be incorporated by way of the amendments were within the special knowledge of the Defendant and that there was no plausible explanation as to why the said facts were not incorporated at the time when the original Written Statement was filed rejected the application on the ground that Defendant has not satisfied the due diligence test. In the said context, it is also required to be noted that in the

application Exh.54 there is no whisper as to why the said amendments were not incorporated in the Written Statement as originally filed. As indicated above, the facts which are sought to be incorporated can be said to be within the special knowledge of the Defendant and therefore the Defendant was obliged to place the said facts on record at the inception. Obviously, the Defendant could not give any justification as to why the facts were not brought on record earlier as the said facts were within his special knowledge. A reading of the amendments disclose that the amendments sought cannot be said to be clarificatory in nature. The Trial Court was therefore right in coming to a conclusion that the Defendant has not satisfied the due diligence test. In that view of the matter, no case for interference is made out. The Writ Petition is accordingly dismissed.

3. The Learned Counsel for the Petitioner prays for continuation of ad-interim relief which is operating in the Petition. In the facts and circumstances of the case, the said prayer is rejected.

[R.M. SAVANT, J]