

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5340 OF 2015

Ranjana Ashok Gaikwad and another ... Petitioners
Vs.
Tanaji Bhikoba Khandve and others ... Respondents

Mr. Amey Deshpande for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : 17TH JUNE, 2015

P.C. :

Not on Board. At the request of Mr. Deshpande, taken up in the production Board.

2. Heard Mr. Deshpande, learned Counsel for petitioners.
3. By this Petition under Article 227 of the Constitution of India, original plaintiffs have challenged the judgment and order dated 04.04.2015 passed by the learned 16th Joint Civil Judge, Junior Division, Pune below exhibit 153 in Regular Civil Suit No.3728 of 2012. By that order, the learned trial Judge rejected the application made by the plaintiffs under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.').
4. In support of this Petition, Mr. Deshpande invited my attention to the application at exhibit 153 made by the plaintiff and in particular paragraphs 11A, B and C, which plaintiffs intend to incorporate by way of amendment. It is sought to be contended in paragraphs 11A that plaintiffs have not received any consideration and the said fact is stated by defendant No.3 Vishnu in his affidavit dated 13.02.2015. It,

therefore, becomes evident that Power of Attorney dated 06.10.1994 was obtained by defendant No.4 from plaintiff by playing deception. A Power of Attorney is forged and fabricated document. While rejecting the application, the learned trial Judge has recorded in paragraph 7 that by way of affidavit dated 13.02.2015, defendant No.6 Vishnu (now defendant No.3) has come up with a contradictory case than what has been averred in the written statement. The learned trial Judge further observed that plaintiffs are entitled to lead evidence in support of their contentions. In paragraph 11, the learned trial Judge has also recorded a finding that trial has commenced in the present case and unless and until parties demonstrate due diligence on their part, the Court cannot allow the amendment.

5. In the present case, plaintiffs did not satisfy the requirement laid down in proviso to Order VI, Rule 17 C.P.C. The learned trial Judge, therefore, rejected the application. I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, the Petition fails and the same is rejected. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) C.P.C.

(R. G. KETKAR, J.)

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