

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.599 OF 2015

Ramesh Jamsing Patil ... Applicant
Vs.
Gulabsing Ramsing Kachava and others ... Respondents

Mr. Amol R. Patil for Applicant.
Mr. Arun H. Palekar for Respondents.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 1, 2015

P.C. :

Heard Mr. Patil, learned Counsel for applicant and Mr. Palekar, learned Counsel for respondents at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendant No.1 has challenged the judgment and order dated 22.07.2015 passed by the learned Joint Civil Judge, Junior Division, Malegaon below exhibit 185 in Regular Civil Suit No.30 of 1995. By that order, the learned trial Judge rejected the application made by the defendant No.1 under Order VI, Rule 17 of C.P.C. for amending the written statement.

3. Mr. Patil submitted that Kesharbai, since deceased, is close relative of defendant No.1. The present application for amendment is taken out for elaborating the contentions raised by defendant No.1 in the written statement. In written statement at exhibit-23, defendant No.1 has categorically set out relationship with deceased Kesharbai but inadvertently, did not give the genealogy tree. It is further contended that while disposing of Revision Application preferred by the applicant, M.R.T. observed in paragraph 18 that no genealogy is produced. It is

also not properly explained. The blood relation or legal relation between Kesharbai and applicant is also not mentioned. In view thereof, defendant No.1 took out application for amending the written statement for disclosing his relationship with deceased Kesharbai as also for annexing genealogy.

4. Mr. Patil submitted that defendant No.1 is also claiming to be an heir of deceased Kesharbai and thus claiming tenancy in respect of the suit property. The learned trial Judge committed error in rejecting the application. He submitted that the learned trial Judge also wrongly proceeded on the premise that the Suit is instituted after amendment of 2002 to C.P.C., and therefore, defendant No.1 has to satisfy the conditions laid down in proviso to Order VI, Rule 17 of C.P.C.

5. On the other hand, Mr. Palekar supported the impugned order. He reiterated the submissions made before the trial Court. He submitted that the proposed amendment is mala fide and with a view to filling the lacuna.

6. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Suit is instituted in the year 1995. In view thereof, the provision of Order VI, Rule 17 prior to amendment of C.P.C. of 2002 will be applicable. The learned trial Judge, however, proceeded on the premise that the Suit is instituted post 2002 amendment, and therefore, defendant No.1 has to satisfy the condition of due diligence. It is however relevant to note that the learned trial Judge has also recorded a categorical finding that the Suit is at the fag end of the trial. Mr. Palekar submitted that the Suit is posted today for delivering judgment. That apart, perusal of paragraph 18 of the order

dated 21.11.2014 passed by the M.R.T. clearly shows that applicant did not disclose his relationship with deceased Kesharbai. On the other hand, in his statement recorded on 02.03.2012, defendant No.1 stated that Kesharbai came to reside with father of the applicant on demise of her husband as she was shelter-less and did not come to reside with the father of the applicant as she is the relative of the father of the applicant. Apart from that, it was further observed that defendant No.1 herein did not produce genealogy as also did not explain relationship with Kesharbai.

7. In view of the finding recorded by the Tribunal in paragraph 18, defendant No.1 took out application for amending the written statement. The submission of Mr. Patil that the proposed amendment is for elaborating the statements made in original written statement cannot be accepted for simple reason that defendant No.1 is only claiming that she is merely a close relative. Nothing prevented applicant to disclose his relationship with Kesharbai, since deceased. However, this case is also found to be contrary to the statement recorded on 02.03.2012. For all these reasons, the learned trial Judge was justified in rejecting the application. More so, when the Suit is pending since 1995 and is posted today for judgment. The proposed amendment is also malafide and with a view to filling lacuna and getting over the observations of M.R.T. in paragraph 18 of the order dated 21.11.2014. Hence, Application fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the applicant, 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.)