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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4998 OF 2014

Karmaveer Gramin Bigar Sheti
Sahakari Pat Sanstha Maryadit ... Petitioner

Vs.

Sou. Gangubai Paygonda Patil and others ... Respondents

Mr.Amit B.Borkar, Advocate for Petitioner.

CORAM : R.G.KETKAR, J.

DATE : 11th JANUARY, 2016

P.C. :

. Not on board. At the request of Mr.Borkar taken up for admission. Heard Mr.Borkar, learned Counsel for the petitioner. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 15/02/2014 passed by the learned Ad-hoc District Judge -2, Kolhapur below Exhibits 75 & 77 in Regular Civil Appeal No. 187 of 2007. By that order, the learned District Judge rejected both the applications.

2. Application at Exhibit 75 was filed under Order 41 Rule 27 of Code of Civil Procedure, 1908 (for short 'C.P.C.') for production of additional evidence. Application Exhibit 77 was filed under Order 1 Rule 10 of C.P.C. for impleading the petitioner as a defendant in original Suit No. 1172 of 2000.

3. Mr.Borkar submitted that on 02/11/1993, petitioner has

purchased the suit property where its office is situate. Regular Civil Suit No. 1172 of 2000 was filed for declaration, possession and injunction by respondents No. 2 & 3 herein. The present petitioner was not made party to the said Suit. The said Suit was decreed exparte on 17/10/2001. He submitted that petitioner filed application for leave to file appeal along with application for condonation of delay. The delay was condoned as also leave to file appeal was granted. He submitted that the petitioner is a bonafide purchaser for value without notice. He had no knowledge about pending litigation between the parties. He, therefore, submitted that the application Exhibit 77 deserves to be allowed and the petitioner ought to be impleaded as a defendant in the Suit.

4. He further submitted that the learned District Judge has committed error in rejecting the application Exhibit 75 under Order 41 Rule 27 on the ground that petitioner has produced photocopies of the documents. Unless, the petitioner files certified copies of the said documents and unless he complies Section 65 of the Indian Evidence Act, 1872, he cannot be permitted to lead secondary evidence. Mr. Borkar submitted that the learned District Judge committed error in rejecting the application as the stage whether the secondary evidence is to be accepted or not will arrive afterwards. The Court has to further first consider whether the petitioner has made out a case for grant of permission to lead secondary evidence.

In support of this proposition, he relied upon the decision of this Court in the case of *Anil Balasaheb Murde Vs. Adinath Trimbak Bodkhe*, **2007(2) Mh.L.J. 406**.

5. As noted earlier, petitioner has filed application under Order 1 Rule 10 of C.P.C. for impleading it as a defendant in the original Suit. It is not in dispute that petitioner was not impleaded in that Suit. The petitioner claims to have purchased property on 02/11/1993. The Suit was decreed on 17/10/2001. It is also not in dispute that as the petitioner was not party to the Suit, it filed application for leave to file Appeal along with application for condoning the delay in filing the Appeal. The delay in filing the Appeal was condoned and leave to file Appeal was granted to the petitioner. While rejecting the application Exhibit 77, the learned District Judge observed in paragraph 10 that leave to file Appeal is granted to the petitioner as it is an aggrieved party. The question whether it is aggrieved or not or whether it has any interest in the property can be gone into while deciding the Appeal on merits. At this juncture, if the application Exhibit 77 is allowed that will amount to allowing the Appeal without admitting it on merits. I do not find that the learned District Judge has committed any error in that regard. While deciding the Appeal, the learned District Judge will decide whether the petitioner has any interest in the suit property or not.

6. As far as the application Exhibit 75 under Order 41 Rule 27 is concerned, Mr.Borkar relied upon the decision of this Court in **Anil Balasaheb Murde's** case. Perusal of the application Exhibit 75 shows that the petitioner has filed application under Order 41 Rule 27 of C.P.C. In the case of **Anil Balasaheb Murde** (*supra*), this Court observed that the trial Court had rejected the application for permission to lead secondary evidence at the threshold. Whether the secondary evidence which the applicant seeks to lead is to be accepted or not, is a stage yet to arrive. The limited question before the trial Court was whether to permit the applicant to lead the secondary evidence or not.

7. In the present case, the petitioner has filed application under Order 41 Rule 27 of C.P.C. and not for permission to lead secondary evidence. In view thereof, I do not find that the learned District Judge has committed any error in passing the impugned order. Hence, for the reasons stated in paragraph 11 of the impugned order, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of proceeding as contemplated by Section 105(1) of C.P.C. Order accordingly.

(R.G.KETKAR, J.)