

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

WRIT PETITION NO.847 OF 2016

Shankarlal Balkrishna Gond : Petitioner
versus
Abidabanoo Abdul Hamid Shaikh : Respondent.

Mr. C N Chavan for the Petitioner.
Mr. Y S Palve for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 16th February 2016

P.C.

1 The order dated 5/11/2015 passed by the Appellate Bench of the Small Causes Court rejecting the Application (Exhibit 14) filed by the Petitioner herein is the subject matter of the above Writ Petition.

2 The Petitioner herein is the original Defendant to the suit in question being RAE Suit No.218/374 of 2010. The said suit came to be decreed by the Trial Court exparte by the judgment and order dated 14/03/2011. In the context of the challenge raised in the above Petition, it would be relevant to note that the cause title of the said suit in so far as the Plaintiff and Defendant are concerned reads thus :-

Mrs. Abida Banu W/o Abdul Hamid Shaikh
Aged 52 years, Occ : Housewife, Adult, India
Inhabitant of Mumbai, residing at Room No.1,
Mohammad Yasin Chawl, Wadar pada,

Near Gita Niwas, Somwar Bazar, Dutta Mandir
Road, Malad (West), Mumbai – 400 064

... Plaintiff

versus

Ramshankar Gaud S/o Balkrishna Gaud
aged about 60 years, adult Indian Inhabitant
of Mumbai, Occ : Business, residing at
Room No.4, Mohammad Yasin Chawl,
Wadar Pada, Near Gita Niwas, Somwar Bazar,
Dutta Mandir Road, Malad (West),
Mumbai 400 064

... Defendant

After the decree came to be passed, the Defendant to the suit filed an Appeal being Misc. Appeal No.63 of 2012. In the said Appeal the Petitioner has filed the instant Application (Exhibit 14) for being permitted to amend the Appeal by changing his name in the cause title as Ramshankar Gond in place of Shankar Balkrishna Gond. The Appeal incidentally was filed in the name of Shankerlal Balkrishna Gound who is shown as the Appellant. It seems that in the Appeal the Petitioner herein i.e. the Appellant is relying upon various documents i.e. electricity bills issued by the Reliance Energy, Senior Citizen Card, Aadhar Card, letter from Income Tax Department and the passbook of the Allahabad Bank in which documents it seems that there is variance in the name of the person in whose name the documents are appearing. Since the Petitioner claims that the said documents are relating to him, the Appellate Bench of the Small Causes Court has held that there is no consistency in the said documents and therefore refused the Petitioner the leave to amend the cause title of the Appeal so as to replace the Appellant Shanker Balkrishna Gound by Ramshankar Gound.

3 In my view, the Appellate Bench of the Small Causes Court ought not to have expressed any opinion on the evidentiary value of the said documents as the Appeal filed by the Appellant is still to be adjudicated upon. Since the suit was filed against the Ramshankar Gaud S/o Balkrishna Gaud, the Appellate Bench of the Small Causes Court at the highest could have directed the Appellant to revert back to the cause title which is of the suit and ought not have made any observations on the evidentiary value of the said documents.

4 The learned counsel appearing for the Petitioner Shri Chavan states that the Petitioner would revert back to the cause title as was appearing in the suit and file the Appeal by reverting back to the name of Ramshankar Gaud S/o Balkrishna Gaud who was sued in the suit as the Appellant. In my view, the Respondent herein cannot have objection to the Petitioner/Appellant reverting back to the name of the Defendant appearing in the suit and in fact the Appeal was required to be filed in the said name. The learned counsel for the Petitioner further states that pursuant to the permission granted by the Appellate Bench, the Petitioner would produce the evidence to indicate that the said Ramshankar Gaud S/o Balkrishna Gaud is the same person as Ramshankar Gond. It is not for this Court to express any opinion on the said aspect as the Appeal is pending. Hence by permitting the Petitioner to revert

back to the cause title of the suit and thereby allowing the Petitioner to substitute the name of the Appellant as appearing in the Appeal No.63 of 2012 by Ramshankar Gaud S/o Balkrishna Gaud, the above Writ Petition is disposed of. Amendment to be carried out within two weeks from date. The development in the above Writ Petition to be pointed out to the Appellate Bench of the Small Causes Court when the said Appeal comes for hearing.

[R.M.SAVANT, J]