

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2925 OF 2016

Harjitsingh Tejasingh Mattu ... Petitioner
Vs.
Narinderjit Motte and others ... Respondents

Mr. Uday B. Nighot for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : APRIL 05, 2016

P.C. :

Heard Mr. Nighot, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and orders dated 01.02.2016 below exhibit-117 and 01.02.2016 below exhibit-118 in Special Civil Suit No.2209 of 2009 passed by the learned Joint Civil Judge, Senior Division, Pune. By order below exhibit-117, the learned trial Judge allowed the application made by the plaintiff under Order VI, Rule 17 read with Order I, Rule 10(2) of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amendment of plaint and for addition of parties. By order below exhibit-118, the learned trial Judge allowed the application filed by the plaintiff under Order XI, Rule 14 of C.P.C. and directed the defendants to produce the documents of title indicating right, title and interest in the alleged property situate at Gujarpura, Tehsil - Batala, District - Gurdaspur, Punjab or any other place in India other than the suit properties.

3. The plaintiff has instituted Suit in the year 2009 for partition, possession, declaration and injunction. Defendant No.1 filed written statement on 30.01.2010 resisting the Suit. Mr. Nighot submitted that in paragraph 4 of the written statement, it was specifically contended that

plaintiff deliberately did not implead some persons as party defendants. In paragraph 6, it was contended that the Suit is bad for non-joinder of necessary parties as plaintiff did not implead all the legal representatives as party defendants. He submitted that plaintiff took out application exhibit-117 on 21.11.2015 under Order VI, Rule 17 of C.P.C. for adding property at Gujarpur, Tehsil – Batala, District – Gurdaspur, Punjab as also for adding Mr. Rajsingh Manmohansingh Mattu and Ms Rashmi Manmohansingh Mattu as defendants No.5 and 6. He submitted that in fact though the objection was raised in the year 2010 itself, plaintiff did not amend the plaint and the application for amendment is taken out only after the evidence of the parties was over as also the written arguments were submitted. In other words, the application for amendment was taken out belatedly.

4. As far as order below exhibit-118 is concerned, Mr. Nighot submitted that the application is made belatedly after defendant No.1 closed his evidence and the Suit was kept for arguments. Defendants have filed written notes of arguments. Plaintiff also partly concluded the arguments. For all these reasons, he submitted that the impugned orders deserve to be set aside thereby dismissing the applications exhibit-117 and 118.

5. I have considered the submissions advanced by Mr. Nighot. I have also perused the material on record. Perusal of paragraphs 4 and 6 of the written statement shows that defendant No.1 raised vague pleas that plaintiff did not implead some persons without specifically pointing out as to which persons are required to be impleaded and on account of non-impleadment of these persons, the suit is bad for non-joinder of necessary parties. Even perusal of paragraph 6 of the written statement shows that defendant No.1 vaguely asserted that plaintiff did not implead all the legal representatives as defendant, without specifying as

to legal representative of which defendant. It is only for the first time in the cross-examination of the plaintiff, she was asked about some property at Gujarpura. In the order below exhibit-117, the learned trial Judge observed that the proposed amendment does not extinguish the admission given by the plaintiff. In fact during the course of arguments, the learned trial Judge brought to the notice of the Advocate for the plaintiff about the admission of the plaintiff that the property at Gujarpura, Punjab is not included as a suit property. The learned trial Judge also noted that the defendants did not plead about this property in pleadings and no issue was framed in that respect. Though the plaintiff took search of the property, she could not get any information. Plaintiff, therefore, took out application seeking direction to the defendant to submit the details of the property in order to include the said property in the Suit. Defendant replied that he is unaware about the said property and even failed to furnish the details of it.

6. In the case of ***Govindrao Vs. Dadarao @ Shrawan, 2004 (4) Mh.L.J. 653***, the learned Single Judge of this Court observed thus,

“ The rule that a partition suit should embrace of the joint family property is recognized and firmly applied in order to bring the equitable partition by metes and bounds. If the rules are not recognized and firmly applied, the multiplicity of litigation would be the inevitable result. If the suit for partition partition is allowed to be instituted in fragments, the jurisdiction of the trial Court and the forum of appeal might be altered; it might be of paramount importance to a party whether he should have a first appeal or a second appeal to the High Court. The rule further ensures a just partition; parties might otherwise be greatly prejudiced as regards equitable distribution, retention of possession, liability for improvements, and adjustment of accounts.”

7. This Court set aside the decree passed by the Courts below by directing the plaintiff to implead the necessary parties and also to include the entire joint family properties in the Suit. In the peculiar facts and circumstances of the present case and for the reasons recorded by

the learned trial Judge, I do not find that the learned trial Judge has committed any error in passing the orders below exhibits-117 and 118. Hence, Petition fails and the same is dismissed.

8. 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) of C.P.C.

(R. G. KETKAR, J.)

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