

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9918 OF 2015

MR. MAHENDRA BANSILAL MUTHA ...Petitioner
Versus
MR. ATUL VALLABH BENKE
AND ORS ...Respondents
....
Mr. Jaydeep Deo, Advocate for the Petitioner.
Mr. Shailendra S. Kanetkar, Advocate for Respondent Nos.1 to 4.
....

CORAM : R. G. KETKAR, J.

DATE : 11th MARCH, 2016

P.C.

1. Heard Mr. Jaydeep Deo, learned Counsel for the petitioner and Mr. Kanetkar, learned Counsel for respondent Nos.1 to 4, at length
2. On the oral application made by Mr. Deo, leave to delete respondent Nos.5 to 12 on the ground that respondent Nos.1 to 4 being the original plaintiffs are the only contesting respondents, is granted. Amendment shall be carried forthwith.
3. Rule. Mr. Kanetkar waives service on behalf of the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for

final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 2.9.2015 passed by learned Jt. Civil Judge, Senior Division, Khed-Rajgurunagar below Exhibits-67 and 69 in Special Civil Suit No.493/2014. By that order, learned trial Judge rejected the applications made by the petitioner, hereinafter referred to as 'defendant No.3'. Defendant No.3 filed application at Exhibit-67 on 5.8.2015 for condoning the delay of two months in filing written statement and taking his written statement on record. Defendant No.3 filed application Exhibit-69 on 5.2.2015 for withdrawing the purshis dated 8.4.2015 filed by the Advocate for defendant Nos.1, 3 and 7 for filing separate written statement.

5. Respondent Nos.1 to 4, hereinafter referred to as the 'plaintiffs' have instituted suit *inter alia* for possession of the property bearing City Survey No.3, admeasuring 3106.67 square meters situate at Kalyan Peth, Junnar, within the municipal limits of Junnar Municipal Council, Taluka-Junnar, District-Pune (for short, 'suit property') as also for mesne profit @

Rs.400/- per sq. ft. along with 18% interest from 2.4.2012 till delivery of the possession of the suit property to the plaintiffs.

6. Defendant No.2 filed written statement on 6.1.2015. On behalf of defendant Nos.1, 3 and 7 Vakalatnama was filed on 4.3.2015 by Advocate M.K. Dighe and Advocate G.C. Sandbhor. On behalf of defendant Nos.1, 3 and 7 purshis dated 8.4.2015 at Exhibit-64 adopting the written statement and say to exhibit-5 at Exh.49 of defendant No.2, was filed. On the same day, learned trial Judge passed the following order :

“ O
 Be filed
 Sd/- 8.04.15 ”

7. Defendant No.3 thereafter filed application Exh.67 on 5.8.2015 for condoning the delay in filing the written statement and for taking written statement on record. Defendant No.3 thereafter filed application dated 5.2.2015 at Exh.69 *inter alia* contending that he has filed separate written statement in the Court. However, it transpired that the Advocate of defendant No.2 has mistakenly filed purshis Exhibit-64 on behalf of defendant No.3 adopting the written statement of defendant No.2. Defendant No.3 intends to contest the suit independently

and accordingly has filed separate written statement. Defendant No.3, therefore, prayed that the written statement filed by defendant No.3 may be taken on record by condoning the delay in filing the written statement.

8. The plaintiffs resisted the application Exh.69 by filing reply dated 19.8.2015 at Exh.70. It was contended that the suit is for hearing of application Exh.5. Application is filed for prolonging the hearing on application Exh.5 and to delay the proceedings and to harass the plaintiffs. Defendant No.3 has not indicated as to under which provision of law the application Exh.69 is preferred. Defendant No.3 after having filed purshis adopting the written statement of defendant No.2 cannot file separate written statement after lapse of five months from the date of appearance. The Advocate appearing for defendant Nos.1, 3, 7 and 8 is one and the same Advocate and, therefore, it cannot be said that Advocate for defendant No.2 mistakenly filed purshis on behalf of defendant No.3 adopting the written statement of defendant No.2. Purshis was filed on behalf of defendant Nos.1, 3 and 7 jointly and not by defendant No.3 alone. By filing application, defendant No.3 is trying to file

additional written statement which is not permissible in law.

9. Mr. Deo submitted that the learned trial Judge committed error in rejecting the application on the ground that defendant No.3 is trying to file additional written statement and that too after four months from adoption of written statement of defendant No.2. The application is filed as an afterthought so as to take different stand which is unwarranted. Mr. Deo submitted that it is not the case of the plaintiffs that defendant No.2 has given some admissions in the written statement which defendant No.3 is trying to withdraw by filing separate written statement. The learned trial Judge also did not hold that defendant No.3 is trying to withdraw admission given in the written statement by defendant No.2. He further submitted that the issues are yet to be framed and, therefore, the learned trial Judge ought to have permitted defendant No.3 to file his written statement.

10. On the other hand, Mr. Kanetkar supported the impugned order. He submitted that it is not the case of defendant No.3 that he never authorized the Advocate to file purshis on 8.4.2015 for adopting written statement filed by

defendant No.2. He submitted that under the guise of filing separate written statement, in effect and in substance, defendant No.3 is filing additional written statement which is not permissible in law. Though the issues are yet to be framed, he submitted that as defendant No.3 did not come with the case that he never authorized Advocate to adopt written statement by filing purshis for defendant No.2. The course adopted by defendant No.3 of seeking permission to file independent written statement is not permissible in law.

11. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record.

12. As noted earlier, the plaintiffs have instituted suit for possession of the suit property against the defendants. With the assistance of learned Counsel appearing for the parties, I have perused the written statement filed by defendant No.2 as also the written statement proposed to be filed by defendant No.3. Mr. Kanetkar was not in a position to demonstrate that defendant No.2 has given any admission in the written statement in favour of the plaintiffs which defendant No.3

intends to withdraw by filing a separate written statement. As noted earlier, the suit is at the stage of hearing of application Exhibit-5. Issues are yet to be framed. In my opinion, no prejudice will be caused to the plaintiff by permitting defendant No.3 to file independent written statement. Learned trial Judge was not justified in observing that the application moved by defendant No.3 is by way of afterthought and that he cannot take different stand. Hence, the impugned order is liable to be set aside thereby allowing applications Exhibits-67 and 69. Hence, the following order :

- (i) The impugned order dated 2.9.2015 is set aside. Applications Exhibits-67 and 69 are allowed.
- (ii) It is made clear that I have not examined the merits of the main suit.
- (iii) Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)