

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 464 OF 2016

SHAIKH YUSUF SHAIKH RAHIM AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Shri H.V. Tungar.
AGP for Respondent Nos. 1 & 2 : Shri S.P. Deshmukh.
Advocate for Respondent No. 3 : Shri B.S. Kudale.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 13th June, 2017

PER COURT :-

1. The petitioners are aggrieved by the order dated 30/10/2015, passed by the Trial Court, by which, his application Exhibit No. 33 in M.A. No. 01/2012 has been rejected.

2. This Court, by order dated 15/01/2016, has stayed the pending proceedings.

3. I have heard the submissions of the learned advocate of the petitioners and the strenuous submissions of Shri Kudale, learned advocate on behalf of respondent No. 3. The other

respondents who are served, have not caused an appearance either in person or through an advocate.

4. The petitioners are the plaintiffs in RCS No. 84/2004, which is a suit for declaration of ownership and injunction. The said suit was dismissed in default on 12/07/2007. The petitioners filed M.A. No. 19/2008 for condonation of delay and restoration of suit. Said application also was dismissed in default on 23/08/2012.

5. The petitioners, therefore, filed M.A. No. 01/2012 for restoration of M.A. No. 19/2008. The petitioners moved an application Exhibit No. 33 stating that paragraph Nos. 2 and 3 of M.A. No. 01/2012 are based on an incorrect information. Since they are not supported with proper instructions, the petitioners desire to delete the said paragraphs. It is then stated that the petitioners intend to introduce paragraph Nos. 2, 3 and 4 in M.A. No. 01/2012. By the impugned order, the Trial Court has rejected the said application.

6. Shri Kudale has strenuously supported the impugned order by contending that the contentions of an applicant would not amount to pleadings in the plaint or written statement under Order VI Rule 1 of the C.P.C. Though the application was filed under Section 151 of the C.P.C., the same has been rightly rejected by the Trial Court with a reasoned order.

7. This Court by order dated 16/09/2014 in Writ Petition No. 7469/13 in between Smt. Laxmibai W/o. Rajaram Shinde and Others Versus Baban Channappa Shinde and Others, has permitted an amendment to an application filed for seeking amendment to the plaint.

8. Notwithstanding the above, the Trial Court could have considered the scope of Section 151 of the C.P.C. while considering Exhibit No. 33. I, therefore, find that the Trial Court has committed an error in refusing leave to the petitioner and to delete paragraph Nos. 2 and 3 of M.A. No. 01/2012 and introduce new paragraphs.

9. In so far as inserting paragraph No. 3 and 4 mentioned in Exhibit No. 33, in M.A. No. 01/2012 are concerned, the same pertain to the contentions of the petitioners that as their suit has been dismissed in default, they have lost the opportunity of an adjudication of the matter on merits and the issue in the suit is with regard to immovable property. In my view, there two proposed paragraphs are in fact, the arguments by the petitioner in support of M.A. No. 01/2012. It is a submission that by the dismissal of the suit in default, the petitioners have lost an opportunity of getting their rights crystallized and as the suit property being an immovable property, the doors of litigation have been closed on them. These submissions being argumentative in nature are not required to be pleaded in M.A. No. 01/2012.

10. Considering the above, this petition is partly allowed. The impugned order dated 30/10/2015 is quashed and set aside. Application Exhibit No. 33 is partly allowed to the extent of permitting the petitioners to delete paragraph Nos. 2 and 3 in M.A. No. 01/2012. The request for addition of paragraph Nos. 3

and 4 are rejected as the said proposed paragraphs are argumentative in nature and the petitioners can canvass the said issue by addressing the trial Court.

11. Consequently, the proposed paragraph No. 2 is permitted to be inserted subject to cost of Rs. 5,000/- to be paid to Respondent No. 3 who has appeared in this proceedings and is represented by advocate Shri Kudale. The said amount shall be deposited within two weeks from today before the Trial Court and respondent No. 3 namely Sayyad Rahim S/o. Sayyad Hussain shall withdraw the said amount without any conditions.

(RAVINDRA V. GHUGE, J.)