

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6001 OF 2016

Parmilabai W/o. Machindra Harne,
Age : 28 yrs, Occ.: Household,
R/o. A/p. Himmatrao Tulsiram Sure,
R/o. Jadhavwadi, Jalgaon Road,
Aurangabad, Dist. Aurangabad. ...Petitioner.

Versus

Ganesh S/o. Narayan Harne,
Age : 56 years, Occ.: Agri.,
R/o. Harsul, Aurangabad,
Tq. & Dist. Aurangabad. ...Respondent.

Advocate for Petitioner : Shri R.V. Gore.
Advocate for Respondent : Shri P.V. Langhe.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 23rd June, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the order dated 11/03/2016, by which, application Exhibit 15, has been rejected by the Trial Court and leave to amend the written statement under Order VI Rule 17 of the Code of Civil Procedure

("CPC") has been refused.

3. This Court by order dated 13/06/2016, has stayed the suit and has granted ad-interim relief in terms of prayer Clause 'C'. Since, then Regular Civil Suit No. 386/2015 has been stayed.

4. I have considered the strenuous submissions of the learned advocates for the respective sides. Learned counsel for the respondent relies upon the following judgments :

(A) Chakreshwari Construction Private Limited Versus Manohar Lal [(2017) 5 SCC 212].

(B) J. Samuel and others Versus Gattu Mahesh and others [(2012) 2 SCC 300].

(C) Jayashree Subhash Kalbande and another Versus Shri Bhaurao Nagorao Derkar and others [2015 (1) Bom C.R. 403].

(D) Chandrashekhar S/o. Pandurang Tumsare Versus Balkrishana S/o. Shivkaran Changani (Sharma) and others [2016 BCI 81].

(E) Modi Spinning and Weaving Mills Company Limited Versus

Ladha Ram and Co. [(1976) 4 scc 320].

5. The respondent / original plaintiff has filed the suit on 08/04/2015, praying for declaration that he is the exclusive owner and possessor of the suit property. Along with such declaration, he has prayed for injunction, which has been granted by the order dated 31/08/2015 passed below Exhibit 5. It is concluded in the order granting injunction that though the sale deed at issue indicates that the suit land was purchased in the name of the plaintiff and deceased husband of the defendant, there is a possibility that the deceased may not be 18 or 19 years on the date of the sale deed and can be about 6 to 7 years of age, going by the school records.

6. The dispute between the parties is that the respondent / plaintiff has sought injunction against the defendant / petitioner who is the widow of deceased Machindra, who was a real brother of the plaintiff.

7. The petitioner filed written statement on 16/07/2015. On

24/11/2015, after the application Exhibit 5 was allowed on 31/08/2015, she moved an application for seeking amendment to the written statement. By the impugned order, the amendment has been rejected for three reasons which are as follows :

(A) The petitioner / defendant has contended in paragraph No. 7 of the written statement that the suit property is the self acquired property of the deceased husband. In the proposed amendment she seeks to contend that the suit property is purchased from the amount of compensation received from the Government in 1987 as the ancestral land was acquired.

(B) The petitioner / defendant has not stated how much compensation was received through the acquisition proceedings.

(C) She has not disclosed the source of information with regard to the acquisition of the ancestral property.

8. It is trite law that the merits of the proposed amendment are not to be assessed while considering the application for

amendment. The Court is not expected to look into the issue as to whether the proposed amendment holds merit. The grounds mentioned in clauses 'B' and 'C' above clearly shows that the Trial Court has entered into the merits of the amendment.

9. In so far as the first ground, on which the application has been rejected, is that a self contradictory stand has been taken by the petitioner / defendant. It is trite law that contradictory stand would defeat the case of a litigant as the litigant is always at risk of losing the litigation, if contradictory stands have been put forth. The petitioner on legal advise has decided to take the said risk.

10. It is not the case of the defendant that she desires to delete paragraphs set out in the said written statement which tantamount to admission, and replace them by the proposed paragraphs. The law laid down by the Hon'ble Apex Court in the matter of Modi Spinning and Weaving Mills (Supra), clearly indicates that the Trial Court has refused the leave to amend the written statement, when the defendant had sought to delete

paragraph No. 25 and 26 which were clear admission in response to the plaint and has sought to replace them with two new paragraphs which would totally change the complexion of the stand taken by the defendant. In the instant case, if the defendant has sought to delete certain paragraph after the order below Exhibit 5 was passed, she could have been precluded from doing so as according to the plaintiff, she has given certain admissions.

11. It is settled that an application for amendment to a written statement has to be entertained liberally, unless inordinate delay and laches could be attributed to the conduct of the defendant. On the date the application for amendment was filed, the issues were not cast. The suit was only six months old. I do not find that this can be said to be an inordinate delay or deliberate act of the petitioner / widow in moving the application.

12. It cannot be ignored that this litigation is between close family members and the defendant is a widow who is 27 years

old and finds herself alone in litigation against her brother-in-law who intends to take away the annual proceeds of the land which, as per revenue record, stands in the name of her deceased husband. The law laid down by the Hon'ble Supreme Court in the matter of Ravajeetu Builders and Developers Versus Narayanaswamy & Sons, [(2009) 10 SCC 84], has been referred to in the matter of Chakreshwari Constructions (Supra). The Hon'ble Apex Court has held that if refusal of the amendment is likely to cause injustice to any litigant and if the application for amendment does not suffer laches and / or inordinate delay, the case for amendment could be considered.

13. The thrust of the plaintiff's submission is that self contradictory stands are taken by the proposed amendment. Even if that be so, ultimately, it is for the petitioner / defendant to suffer if the contradictory stands turn to be fatal to her case.

14. Considering the facts as recorded above, I am of the view that in order to allow the defendant to put forth her case, the application could have been allowed, moreso when the

application was filed when the suit was just six months old.

15. Considering the above, this petition is allowed. The impugned order dated 11/06/2013, is quashed and set aside and application Exhibit 15 is allowed with the direction to the petitioner that the amendment in the written statement shall be carried out within a period of three week's from today. It is made clear that the background in which this application has been allowed, would preclude the petitioner from deleting any paragraph from the written statement and would not be permitted to alter the pleadings.

(RAVINDRA V. GHUGE, J.)

S.P.C.