

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6627 OF 2017
(Raosaheb s/o Mahada Bangar Vs. Meenabai w/o Gokul Vighne and
others)

Mr.S.S.Thombre, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 08/09/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 27/04/2017 by which application Exh.124 filed by the petitioner / defendant No.1 in RCS No.134/2017 has been rejected.

2. I have considered the strenuous submissions of Mr.Thombre, learned Advocate for the petitioner. He has criticized the impugned order as being perverse and erroneous. He draws my attention to the 4 grounds formulated in the petition and prays that the impugned order deserves to be quashed and set aside.

3. I find from the submissions of the petitioner that when he was being cross examined before the Trial Court, a question was put to him as to whether Gat No.512 is purchased through the nucleus of joint family holding as the land is alleged to be an ancestral property.

The petitioner answered by saying that the said gat number is purchased from the earnings of the joint family holding and half of the share is partitioned and handed over to Kashinath. The learned Advocate for the petitioner contended that his case is that Gat No.512 is not a joint family holding. He had purchased the said land from his own earnings and therefore it would become a self-acquired property. An inadvertent answer has been given and the petitioner never intended to give any admission against his own interest.

4. I find from the observations of the Trial Court that the said question was posed to the petitioner on 2 occasions. It was by way of a suggestion posed to him that the Gat No.512 has been purchased from the joint family holdings and he answered by saying 'yes'. The Trial Court asked the petitioner once again as to whether he has understood the question and he said that he properly understood it and he repeated his answer in the affirmative.

5. The Trial Court has further noted in the impugned order that when the learned Advocate for the petitioner raised an objection, the petitioner witness then joined the learned Advocate in saying that the answer is different. It is in this backdrop that the Trial Court has rejected Exh.124 seeking correction in the answer recorded.

6. In my view, such matters as like the case in hand are to be considered by the Trial Court before whom the exercise of examination and cross-examination is going on. It is actually the Trial Court which can consider the fact situation on the basis of the happenings that have actually taken place in the presence of the learned Judge. Such peculiar questions cannot be considered by this Court keeping in view that the Trial Court has narrated the total scenario that had occurred in his presence, in the impugned order.

7. For the above reason, this petition being devoid of merit, stands disposed of. Nevertheless, in the event the petitioner desires to address the Trial Court while advancing the final arguments in the suit that the answer recorded was out of inadvertence and is against the record and the pleadings of the parties, the petitioner may do so and the Trial Court would consider the said argument in the light of the pleadings and the oral and documentary evidence recorded in the matter.

(Ravindra V.Ghuge, J.)