

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10231 OF 2015

DEVIDAS JANARDHAN NIWARE
VERSUS
SAVITRIBAI RATANLAL GARDE AND OTHERS

...
Advocate for Petitioner : Shri Ghatol Patil Shahaji B..
Advocate for Respondents : Shri Kagne Vinayak M..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd August, 2017

Per Court:

1 The Petitioner is aggrieved by the order dated 26.08.2015 by which the Trial Court has allowed the application Exhibit-107 filed by Respondent Nos.1 to 4/ original Defendants and has allowed the said Defendants to amend their Written Say which they have construed as their Written Statement by virtue of the purshis filed earlier in the proceedings.

2 The learned counsel for the Petitioner/ original Plaintiff has strenuously criticized the impugned order. He has drawn my attention to the nine grounds raised in the petition. He submits that proviso to Rule 17 below Order 6 of the Code of Civil Procedure creates a strict embargo on the manner of the amendment and the nature of the amendment.

3 He has relied upon the following judgments in support of his case:-

- (a) Adv.Pallavi w/o Abhijit Mahashabde vs. Milind Balaji Gandhi, 2011 (4) All M.R. 515.
- (b) Chhabubai Haribhau Badakh vs. S.H.Khatod, 2009 (6) Mh.L.J. 760 : 2009 (5) BCR 311.
- (c) Ajendraprasadji N. Pande vs. Swami Keshavprakeshdasji N., AIR 2007 SC 806.
- (d) Raj Kumar Gurawara vs. S.K. Sarwagi and Company Pvt. Ltd., AIR 2008 SC 2303 : 2008 (14) SCC 364.
- (e) Vidyabai and others vs. Padmalatha and another, AIR 2009 SC 1433.
- (f) Jeet Ram Kishore and others vs. Sunder Singh, AIR 2005 Himachal Pradesh 21.

4 He has further contended that after the trial has commenced, the amendment should not have been allowed.

5 The learned counsel for the Respondents/ original Defendants submits that Defendant No.1 had filed a detailed Say on 27.04.2004 opposing the application for temporary injunction Exhibit-5. Defendant Nos.2, 3 and 4 had filed a purshis indicating that the said Say filed by Defendant No.1 be construed as their Written Say and their Written

Statement in the suit.

6 He further submits that the Trial Court has not passed "No W.S. order" against any of the Defendants. It is only because of the confusion as regards the contents of the Written Say which is to be treated as the Written Statement, that the Defendants filed the application Exhibit-107 praying for addition of certain words to indicate that the said Written Statement is not restricted only to opposing the temporary injunction application, but for opposing the contents of the plaint as well.

7 Considering the law cited by the learned Advocate for the Petitioner, it cannot be disputed that while granting amendment to the plaint, such amendments have to be strictly looked into. It is settled law that when the Defendants seek to amend their Written Statement, such an amendment is to be considered liberally and the strictness which applies to the amendment to the plaint would not generally apply to the amendment to the Written Statement.

8 In the light of the judgments delivered by the Honourable Apex Court in the matters of Revajeetu Builders and Developers vs. Narayanaswami & Sons and others, 2009 (10) SCC 84 and Chakreshwari Construction Pvt. Ltd. vs. Manohar Lal, 2017 (5) SCC 212, if an amendment can prevent multiplicity of litigation and if laches and oblique motives are not attributed to the conduct of the applicants seeking amendment, such amendment can be allowed. It is equally settled that

while considering the application for amendment, the merits of the pleadings in the amendment are not to be considered.

9 In the instant case, Defendant Nos.2, 3 and 4 have filed a purshis adopting the Written Say of Defendant No.1. Defendant No.1 has submitted a lengthy and detailed Written Say running into nine pages. In the prayer clause, it is specifically stated that the suit be dismissed and the application for temporary injunction should also be dismissed. It is apparent that Defendant No.1 has titled the said document as "Say" though the prayer clause clearly indicates that the said Defendant No.1 prays for dismissing the main suit as well. It, therefore, has every trappings of the Written Statement. In the verification, it is specifically stated on oath that the contents of the Written Statement and the Say are true and correct. This indicates that Defendant No.1 has specifically filed the Written Statement opposing the plaint as well as the application for interim relief and has inadvertently titled the document in the cause title as "Say".

10 Defendant Nos.2, 3 and 4 have adopted the said document Exhibit-8 filed by Defendant No.1, as their Written Statement. The Trial Court has also accepted the said purshis and has treated all Defendants as having filed their Written Statement. Hence, no order as like "No W.S." has been passed by the Trial Court against any of the Defendants.

11 It is in the above backdrop that the Defendants moved an

application for amending the cause title in the Written Statement Exhibit-8 to indicate that it is not just the "Say", but it is also the "Written Statement". Though the Trial Court has permitted the said amendment, apparently it was not necessary considering the entire text of Exhibit-8 filed by Defendant No.1 and adopted by Defendant Nos.2, 3 and 4, which clearly indicates that it is infact the Written Statement.

12 The Trial Court has permitted the Defendants to add a sentence in paragraph 9 of their Written Statement that the revenue record of the Paithan Nagar Parishad and the record maintained by the Land Records, Paithan would indicate that they have a legal title over the suit property as well as the "Vahivat". All this will have to be tested in trial and the Defendants will have to prove the said aspect. It, therefore, does not amount to changing the nature of the cause of action. The cause of action has been put forth by the Plaintiff and not by the Defendants.

13 Considering the above, I do not find that the impugned order permitting the Defendants to make formal changes in their Written Statement could be termed as being perverse or erroneous.

14 Keeping in view the law laid down by the Honourable Supreme Court in the matters of *Syed Yakoob v/s K.S.Radhakrishnan*, AIR 1964 SC 477 and *Surya Dev Rai v/s Ram Chander Rai*, AIR 2003 SC 3044, merely because a different view could be taken, cannot be a ground for setting aside the impugned order.

15 Considering the above, this Writ Petition being devoid of
merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)