

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3346 OF 2015
IN
FIRST APPEAL NO. 957 OF 2012

Mr. Jagdish Yashwant Gupte	..	Appellant
vs.		
Mrs. Alka Bal Deshpande	..	Respondent

AND
CIVIL APPLICATION NO. 3380 OF 2014
IN
FIRST APPEAL NO. 957 OF 2012

Mrs. Alka Bal Deshpande	..	Applicant (Ori. Respondent)
vs.		
Mr. Jagdish Yashwant Gupte	..	Respondent (Ori. Appellant)

Mr. Ram Apte – Senior Advocate with Mr. S. N. Chandrachud for Appellant in FA.
Mr. G. V. Nagarsheth for Respondent in FA.

CORAM : M. S. SONAK, J.
DATE : 03 APRIL 2017

P.C :

1] By Civil Application No. 3346 of 2015, the appellant, seeks leave to produce two documents, in addition to the documents which were already permitted to be produced on record by this Court by an order dated 17 April 2013.

2] Civil Application No. 3380 of 2015 has been taken out by the respondent objecting to the production of these two documents.

3] By order dated 17 April 2013, this Court, had directed the following :

“1. Reply to present application which is tendered in court is taken on record.

2. At the outset learned senior Advocate Mr. Apte states that the applicant would like to file separate application for producing evidence of Smt. Surekha Potphode who could not be examined. If such an application is filed it would be considered in due course.

3. Present application is for leave to lead additional evidence by way of production and proof of documents annexed to the application. Those documents pertain to the proof of fact that the Will was acted upon. Proof of this document will have to be formally given after relevance thereof is established. Subject to right of other side to argue on relevance of the annexures the application for additional evidence is allowed.

4. The photocopies annexed to the application be produced as part of paperbook with appropriate evidence in support by way of affidavit.”

4] In pursuance of the aforesaid, the matter is now pending before the learned trial Judge for record of additional evidence. Learned counsel for the respondent points out that the appellant had given up their right to rely upon the said two additional documents. On the contrary, Mr. Apte, learned Senior Advocate for the appellant points out that the appellant had not given up his rights but had merely stated that he will not produce the two documents without seeking leave of this Court. He submits that these documents are relevant and therefore, leave should be granted to produce the same on record.

5] Normally, an application under Order XLI Rule 27 of the CPC is required to be disposed of at the stage of final hearing of the Appeal itself. In this case, possibly, in order to assist the Court, learned trial Judge was directed to record certain additional evidence. Ultimately, whether such evidence should be considered or not will have to be decided at the stage of final hearing of the Appeal.

6] In these circumstances, rather than, delay the process before the learned trial Judge, it is directed that the appellant may, without prejudice to the rights and contentions of the respondent, be permitted to produce these two documents on record, so that, the recording of evidence before the learned trial Judge is completed. Learned counsel for the respondent points out that this Court by its order dated 17 April 2013, had directed the appellants to produce as a part of the paper-book, the photocopies annexed to Civil Application No. 324 of 2013 and he submits that the appellant has till date, not complied with this. Mr. Apte, learned Senior Advocate for the appellant states that this part of the order to be complied in two weeks from today. In case, there is no compliance, learned trial Judge may make record that there is no record and submit a report to this Court, so that further indulgence need not be granted to the appellant.

7] Further, it is made explicitly clear that the issue of admissibility or otherwise of the two additional documents is kept open and all contentions of the respondent in this regard will be considered by this Court itself at the stage of final disposal of the Appeal. This applies not only to the two additional documents, but also to rest of the documents or rest of the evidence which is now being recorded by the learned trial Judge.

8] The learned trial Judge to complete the exercise directed by orders dated 17 April 2013 and 9 December 2013 within a period of six months from today.

9] In view of the aforesaid, both the Civil Applications are disposed of.

10] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)