

Mr. Prabhanjan B. Gujar for Petitioner.
Ms Jyoti Chavan for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 19, 2017

Heard Mr. Gujar, learned Counsel for petitioner and Ms Chavan, learned Counsel for respondent No.2 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant', has challenged the judgment and order dated 29.04.2015 passed by the learned Joint Civil Judge Junior Division, Khandala below exhibit-126 in Regular Civil Suit No.4 of 2009. By that order, the learned trial Judge allowed the application made by the plaintiff No.2B for filing additional evidence affidavit.

3. In support of this Petition, Mr. Gujar strenuously contended that as contemplated by Order 18, Rule 4 (1-B) of C.P.C., plaintiff 2B has not made out a sufficient cause. He submitted that application is made after 11 months from closure of plaintiffs' evidence and after filing of defendant's examination-in-chief. Defendant filed examination-in-chief on 20.08.2014. In the application, plaintiff No.2B averred that he is illiterate. This is factually incorrect as he is educated upto 4th Standard. He further submitted that by the additional affidavit, plaintiff

No.2B has improved his earlier case.

4. On the other hand, Ms Chavan has invited my attention to paragraph 4 of the impugned order. While allowing the application, the learned trial Judge has considered several circumstances and came to the conclusion that the affidavit was inadvertently filed. She further submitted that plaintiff No.2B is not trying to improve his earlier case.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 4 of the impugned order, the learned trial Judge has considered the following circumstances:

- a. Name of the defendant is differently mentioned;
- b. Even the name of the plaintiff No.2B is corrected subsequently;
- c. The Suit is in respect of Gat No.469, 394. The affidavit of evidence is in respect of Gat No.92, 219;
- d. The contents of paragraph 3 of the affidavit of evidence are vague;
- e. Though there is only one defendant, the affidavit refers to defendants No.1 to 10;
- f. The Suit is for declaration that the Will Deed of the defendant is illegal, mandatory injunction, recovery of possession and mesne profits but affidavit of evidence discloses prayer for partition.

6. The learned trial Judge has considered the circumstances and observed that totally different affidavit is filed in respect of properties, which are not even the subject matter of the Suit.

7. Mr. Gujar submitted that in fact witness was confronted with the mistakes contained in the affidavit. He admitted and still, no steps were taken. It is only after the evidence of the plaintiffs was closed and defendant also filed affidavit of evidence on 20.08.2014, the present application is made. He submitted that in case the Court is inclined to dismiss the Petition, exemplary costs may be imposed on plaintiff No.2-B. I do not find any merit in this submission, as basically for reasons recorded in paragraph 4 of the impugned order, no fault can be found with the impugned order. Hence, Petition fails and the same is dismissed.

8. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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