

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2378 OF 2015

RAMRAO VIKRAM GILBILE AND OTHERS
VERSUS
SUBHASH VIKRAM GILBILE

Advocate for Petitioner : Mr. Shaikh Shoyab.
Advocate for Respondent : Mr. B.A. Dhengle.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 12th June, 2018

PER COURT :

1. The petitioners, who are original defendants in R.C.S. No. 501/2003, are aggrieved by the order dated 16/10/2014 passed by the Trial Court, by which, application Exhibit 78 filed by the plaintiff seeking leave to add the real Sister of the defendants, has been allowed.

2. By order dated 04/08/2015, this Court has granted ad-interim relief in terms of prayer clause 'C' and consequentially, the suit has been stayed.

3. I have heard the learned advocates for the

respective sides at length. Learned advocate for the petitioners has strenuously criticized the impugned order. Contention is that the suit is of the year 2003 and the application for addition of the Sister of the petitioners has been filed on 13/06/2013. It is further stated that an application Exhibit 41 was earlier filed in the same suit which was rejected. It is further canvassed that the addition of their sister would change the cause of action.

4. The petitioners place reliance upon the judgments of the Hon'ble Apex Court in the matter of **Mashyak Grihnirman Sahakari Sanstha Maryadit Versus Usman Habib Dhuka and Others [2014(1) Mh.L.J. 597]** and the judgment of this Court in the matter of **Gangubai Baban Kadam and another Versus Dr. Vidya Vijay Joshi [2015(2) Mh.L.J. 444]**. In the alternative, it is prayed that heavy costs of Rs. 15,000/- be imposed upon the plaintiff to be paid to the petitioner for belatedly causing the amendment.

5. There is no dispute that the suit is instituted in the year 2003 and application Exhibit 78 has been filed in the year 2013. It, however, cannot be ignored that

the person sought to be arrayed as a defendant is one Anjali alias Manjiri. The petitioners concede that Manjiri is their real Sister and their father is Vikram. The plaintiff is also the Son of Vikram. He claims to be the step brother of defendant Nos. 1 and 2.

6. In so far as an application Exhibit 41 filed earlier by the plaintiff is concerned, he had stated that one Anjali was the real Sister of the defendants. The defendants have stated that they do not have any Sister by the name Anjali. On these premises, the earlier application was rejected.

7. In the written statement filed by the defendants, they have contended that Manjiri is the real Sister of defendant Nos. 1 and 2 and Pratibha is another real Sister. It is, further, prayed in the written statement that as Manjiri has not been arrayed as a defendant, the suit for seeking partition and separate possession deserves to be dismissed for non-joinder of necessary party.

8. It is in this backdrop that the plaintiff realized that though Manjiri was called as Anjali by the family

members, her name was Manjiri W/o. Mohan Kade. Exhibit 74 was therefore, filed for seeking leave to add Manjiri as the defendant. The other real Sister Pratibha has already added as defendant No. 4. Manjiri was the only person left out.

9. It is in the light of the above fact situation and taking into account that the suit was for seeking partition and separate possession that the Trial Court has allowed Exhibit 78, despite the delay caused.

10. The petitioners/original defendants are justified in contending that the plaintiff has not explained as to why he has sought the addition of Manjiri after 10 years of the suit. It, however, cannot be ignored that the suit is for partition and separate possession and it would necessarily require all such blood relatives who may have a share in the property, to be involved in this litigation. The delay caused can be condoned to do complete justice by imposing costs on the plaintiff to be paid to these petitioners. If such addition is refused, it would leave a permanent deficiency in the suit and the possibility of a remand on account of non-joinder of necessary parties in further litigation, cannot be ruled

out.

12. At this juncture, learned advocate for the petitioners submits that if the plaintiff is imposed with costs of Rs. 15,000/- and if the suit is expedited, the petitioners would co-operate and the suit could be decided expeditiously.

13. Considering the factors set out herein above, I do not find that the Trial Court has committed an error in permitting the addition of Manjiri as defendant No. 5. However, the Trial Court has imposed meager costs of Rs. 800/-. The said costs can be enhanced to Rs. 12,000/- so that each of the petitioners would receive an individual costs of Rs. 3,000/-.

14. Considering the above, this petition is partly allowed only to the extent of enhancing the costs. The plaintiff shall deposit an amount of Rs. 12,000/- with the Trial Court on/or before the 07th day of July, 2018 and these four petitioners can withdraw the said amount in equal proportions without conditions. The Trial Court would endeavor to decide R.C.S. No. 501/2003, as expeditiously as possible and in any case on/or before

the 31st day of March, 2019. The litigating sides would refrain from seeking adjournments on unreasonable or trivial grounds.

(RAVINDRA V. GHUGE, J.)

S.P.C.