IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 6489 OF 2018

Manisha R. Vadkhalkar … Petitioner
Vs.
Rajendra Anandrao Dalvi & Ors. … Respondents

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Mr. Sachindra Shetye, for the Petitioner.
Mr. Girish Kedia, for Respondent Nos. 1 & 2.

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CORAM : R.D. DHANUKA, J.

DATE : OCTOBER 30, 2018

P.C.

1. By this petition filed under Article 227 of the Constitution of India, petitioner is challenging the orders - (i) dated 15.11.2017 passed below Exhibit 109; and (ii) dated 28.3.2016 passed below Exhibit 104, by the learned Civil Judge, S. D. Palghar, allowing two separate applications for amendment of the plaint, filed by original defendant No. 11 (respondent No. 1 herein).

2. Original plaintiff Ramesh Anandrao Dalvi has filed a suit for partition of the property. Defendant No. 11 has filed written-

statement in the said suit and agreed for partition of the property. It was case of defendant No. 11 that after the suit was filed in 2011, defendant No. 1 filed an application for his transposition as plaintiff No. 2 in the said Special Civil Suit No. 13 of 2011. The said application was opposed by Respondent Nos. 1 to 4 (original defendant Nos. 1 to 4). Learned trial judge allowed the said application (Exhibit 104) by an order dated 28th March, 2016. The said order has been implemented, and the original defendant No. 11 has been transposed as plaintiff No. 2.

3. Plaintiff No. 2 thereafter filed a fresh application on 5th July, 2016, *inter alia* praying for amendment of the plaint and to make additional claims against defendant Nos. 1 to 4. The said application was opposed by original defendant Nos. 1 to 4 and came to be allowed by order dated 15th November, 2017 passed below Exhibit 109.

4. The petitioner has impugned both these orders by filing this writ petition on 9th January, 2018. Learned counsel for the petitioner (original defendant No. 3) submits that suit was for

partition and no application for transposition could have been made by defendant No. 11. He submits that not only said application seeking transposition of defendant No. 11 as plaintiff No. 2 was allowed by the learned trial judge, but also an application for amendment (Exhibit 109) allowing the inclusion of additional claims beyond the period of limitation.

5. Mr. Girish Kedia, learned counsel for Respondent No. 1 (original defendant No. 11 / plaintiff No. 2), on the other hand, submits that since the original plaintiff No. 1 did not pursue the suit and all the parties being senior citizens, he was required to make an application for transposition. He submits that the said application was rightly allowed by the learned trial judge by an order dated 28th March, 2016.

6. Insofar as application (Exhibit 109) is concerned, it is submitted by the learned counsel that the original plaintiff No. 2 had already referred to the additional claim in the written-statement filed by him. Since defendant No. 11 was transposed as plaintiff No. 2, he applied for amendment of plaint to insert additional prayers

under Order VI, Rule 17 of the Code of Civil Procedure, 1908. He submits that the learned trial judge allowed the said application on 15th November, 2017, keeping the issue of limitation open.

7. The learned counsel invited my attention to the roznama in Special Civil Suit No. 13/2011 filed by the original plaintiffs and submitted that after 15th November, 2017 when the second application for amendment was allowed, the matter appeared before the learned trial judge on several occasions. He submits that plaintiffs have paid the required additional court fee, in view of the second amendment permitted by the learned trial judge. He submits that defendant Nos. 1 to 4 have taken several adjournments from the trial court for filing additional written-statement. He submits that the petitioners have suppressed from the trial court that they had filed writ petition *inter alia* impugning the orders of amendment passed by the trial court. He submits that since the orders of amendments have been already implemented by his clients and petitioners having taken several adjournments for filing additional written-statement, this Court should not interfere with

the order passed by the learned trial judge. He submits that the issue of limitation is already kept open, the ad-interim order passed by this Court shall stand vacated.

8. It is not in dispute that the suit is filed by the original plaintiffs for partition and accounts. Defendant No. 1, who had filed written-statement had also admitted the relief of partition in the written-statement, however, subject to accounts. The application for transposition filed by defendant No. 11 was disposed of by the trial court on 28th March, 2016. The said order was not immediately challenged by the petitioner. Defendant No. 11 filed application (Exhibit 109) on 5th July, 2016 *inter alia* seeking amendment of plaint to include certain claims. The said application was allowed on 15.11.2017. Learned counsel for the petitioners did not dispute that defendant No. 11, who was transposed as plaintiff No. 2 has paid additional court-fee, in view of second amendment permitted by the learned trial judge. A perusal of roznama clearly indicates that the matter has been adjourned from time to time for filing additional written-statement of the petitioners (original defendant

Nos. 1, 3 & 4) at the request of the petitioners.

9. Insofar as issue of limitation raised by the petitioners is concerned, a perusal of order dated 15.11.2017 passed below Exhibit 109 clearly indicates that said issue of limitation is kept open. Most of the parties in this matter are senior citizens and some of them are above 80 years. The suit is of 2011. In these circumstances, I am not inclined to interfere with the impugned orders passed by the learned trial judgment. It is made clear that merely because amendments are permitted by the learned trial judge, contents thereof are not accepted by the petitioners. The contentions in respect of merits of the additional claims and issue of limitation raised by the plaintiffs in the suit are kept open. I, therefore, pass the following order.

ORDER

(a) The writ petition is dismissed.

(b) The petitioner shall file additional written-statement within six weeks from today. It is made clear that no further extension will be granted. Copy of the said additional written-statement shall be served on the

plaintiffs simultaneously.

(c) The learned trial judge is directed to frame additional issues based on the amended plaint as well as on amended / additional written-statement, within two weeks from the date of filing additional written-statement by defendant Nos. 1, 3 and 4.

(d) Both the parties are directed not to seek unnecessary adjournments before the trial court.

(e) Hearing of the suit is expedited. The learned trial judge shall make an endeavour to dispose of the suit within 12 months after filing of the additional written-statement.

Sd/-
[R. D. DHANUKA, J.]

Vinayak Halemath