

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3466 OF 2016
WITH
CIVIL APPLICATION No. 775 OF 2016 IN W.P. No. 3466 OF 2016

Ravindra Narayan Ghude ... Petitioner/Applicant

Vs.

Mrs. Pankaja Narayan Ghude & Ors. ... Respondents

Mr. Santosh S. Pathak, Advocate for the petitioner/applicant.

Mr. Sachin R. Pawar, Advocate for respondent Nos. 1 to 5.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 15th June, 2018.

P.C.:

Rule. Rule made returnable forthwith. The learned counsel for respondent nos. 1 to 5 waives service. By consent, the Writ Petition is disposed of at the stage of admission.

2. This Writ Petition is directed against the order dated 3rd December, 2015 passed by the learned Joint Civil Judge Senior Division, Ratnagiri below Exhibit 50 in Regular Civil Suit No. 11 of 2013 rejecting the Application seeking amendment in the written statement. The mother and other siblings have filed the suit for partition against the defendant/son. The defendant/son filed the written statement, issues were settled and the plaintiffs have completed the evidence. At that stage, the defendant filed an

application for amendment of the written statement under Order 6 Rule 17 of Code of Civil Procedure on the ground that he has become the sole owner of the property, as the property is bequeathed to him by will dated 24th September, 2000 executed by the deceased-father. The said application was opposed and after hearing, it was rejected. Hence, this Petition.

3. The learned counsel for the petitioner/defendant has submitted that the Application for amendment of the written statement was erroneously rejected by the trial Court. The amendment was sought only for the purpose of elaborating facts which are stated in the original written statement. The petitioner has taken defence in the written statement that he is the sole owner of the said property and accordingly, the mutation has take place in the revenue record. He has submitted that in fact the petitioner has become the sole owner of the property due to will of his father, which was executed solely in his favour. The learned counsel has submitted that the petitioner has given instructions accordingly based on the said will to his previous counsel, who has not mentioned those facts in the written statement. The petitioner/defendant has now changed the Advocate and the new Advocate found that those facts are missing in the written

statement and, therefore, he moved this Application for necessary amendment. In support of the submissions that the amendment is sought only for elaborating or amplifying the defence taken, the learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **State of Bihar & Ors. vs. Modern Tent House & Anr.**, reported in **(2017) 8 SCC 567**.

4. The learned counsel for the respondent nos. 1 to 5 opposed the Application and has submitted that the plaintiff's cross-examination is over and in fact the suit was fixed for judgment when this Petition was filed. He further submitted that the matter was not stayed by this Court, therefore, the Application is pending. The learned counsel supported the order passed by the trial Court and submitted that the Writ Petition be dismissed.

5. Perused the written statement and the proposed amendments. The learned counsel for the petitioner has admitted that in the written statement, there is no whisper about the will. Thus, though the petitioner has contended that he is the sole owner of the property, and how the property has derived to him is not at all pleaded by him in the written statement. This was the necessary pleading and basic

defence. However, as this defence is totally absent in the written statement, considering the proposed amendment, which is completely varying, there is reference of the amount and defence taken thereupon cannot be said that it is elaboration or amplification of the defence which was already taken. No doubt, the amendment in the written statement can be allowed if it is found proper, necessary and is only for the elaboration of the facts which are already stated. However, it is not so in the present case. Therefore the ratio laid down in the case of **State of Bihar** (*supra*) wherein the Hon'ble Supreme Court has held that the proposed amendment if on facts and the defendant, in substance, seek to elaborate the facts originally pleaded in the written statement, then such amendment to written statement is to be allowed. It is not applicable to this case. Hence, Writ Petition is dismissed. Civil Application is also accordingly disposed of.

6. The trial Court to proceed with the matter and try to conclude the suit on or before 30th October, 2018. Parties to cooperate.

(MRIDULA BHATKAR, J.)