

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8216 OF 2014

Pargonda Appasaheb Patil & Ors. .. Petitioners
vs.
Sou. Rakhi Avinash Patil & Ors. .. Respondents

Mr. Tejpal S. Ingale for Petitioners.
Mr. Ashish P. Pawar for Respondents.

CORAM : M. S. SONAK, J.
DATE: 26 MARCH 2018

P.C :

1] Heard Mr. Ingale for the petitioners and Mr. Pawar for the respondents.

2] The challenge in this petition is to the order dated 23rd July 2014, by which the learned trial Judge has declined the petitioners (original defendants) leave to amend the written statement.

3] Mr. Ingale, the learned counsel for the petitioners submits that this is not a case of withdrawal of admission but it is only a case of explaining the admissions in the written statement originally filed. Mr. Ingale relies on ***Ram Niranjana Kajaria vs. Sheo Prakash Kajaria & Ors.***¹, to submit that admissions in pleadings cannot be permitted to be withdrawn by amendment but application may be

1 (2015) 10 SCC 203

made for explaining / clarifying the admissions.

4] Mr. Ingale submits that at the time when the written statement was originally filed, the petitioners did not have the benefit of the order made for consolidation by the appropriate authorities. In terms of this order, it is quite clear that the property in question was not ancestral property liable for partition but rather, the concerned property was one, which was exclusively owned by the petitioners and therefore, not liable for partition. Mr. Ingale submits that this explains the diligence on the part of the petitioners and since, this is only a case of explaining admission, the learned trial Judge, ought to have allowed the application for amendment.

5] Mr. Pawar, the learned counsel for the respondents submits that the original written statement was filed in the year 2010. Even in the order on Exhibit 5 (interim relief), the trial court, relying upon the admission in the original written statement has proceeded on the basis that the property concerned was undoubtedly ancestral property. Mr. Pawar submits that to now say that this is not an ancestral property is nothing but withdrawal of admission and not explanation of the admission. Mr. Pawar submits that there is no reference to the consolidation order in the application seeking leave to amend which was admittedly made after the trial had commenced in the suit. He submits that there is no due diligence

exhibited by the petitioners. He submits that there are several decisions rendered by this court in which, it is categorically held that admissions once made, cannot be withdrawn by resort to the provisions of order VI Rule 17 of the CPC. For all these reasons, Mr. Pawar submits that the present petition may be dismissed.

6] Rival contentions now fall for determination.

7] In this case, an application for amendment has been made after the commencement of the trial. In the original written statement, it was clearly admitted that the property concerned was an ancestral property. Now, by way of amendment, this admission is sought to be taken away. This is not a case of mere explanation or clarification of the admission. The explanation or the so-called clarification now proposed to be submitted is the explanation or clarification for stating why the concerned property is not an ancestral property. This is not a type of explanation or clarification contemplated in the case of *Ram Niranjan Kajaria* (supra).

8] In *Ram Niranjan Kajaria* (supra), the Hon'ble Supreme Court, has clearly held that admissions made in pleadings cannot be permitted to be withdrawn. However, application may be made for explaining / clarifying admissions. This means that an amendment is permissible to indicate what a party meant, in terms of the pleading,

which is styled as the admission. In this case, the earlier pleading was that the concerned property is an ancestral property. By means of amendment, this admission is sought to be withdrawn. The explanation, if at all, is in the context of explaining why such admission is sought to be withdrawn. This is not a case of explanation or clarification of the admission itself.

9] That apart, this is not a case where due diligence has been established. On the basis of this admission, the trial court, disposed of the application for interim relief (Exhibit '5'). At least at this stage, the petitioners ought to have taken steps and applied for leave to amend. At this stage, the trial in the suit has already commenced. In the application seeking leave there is neither any reference to the consolidation order nor is there any other cogent explanation to demonstrate the diligence.

10] There is no jurisdictional error in the view taken by the trial court. For all these reasons, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)