

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2694 OF 2017

Mr. Kisan Chandrakant Padekar

...Petitioner

Versus

Mr. Satish Balwant Mantri

And Ors.

...Respondents

....

Mr. Prashant Tikare, Advocate for the Petitioner.

Ms. Vasudha Narvekar, Advocate for Respondents No.1, 2, 4 & 5.

....

CORAM : R. G. KETKAR, J.

DATE : 19th JULY, 2018

P.C.

1. Not on board. At the request of Mr.Tikare taken up for admission.
2. Heard Mr.Prashant Tikare, learned counsel for the petitioner and Ms.Vasudha Narvekar, learned counsel for respondents No.1, 2, 4 & 5, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant No.2', has challenged the judgment and order dated 25.10.2016 passed by the learned Judge, Court Room No.9 of the Small Causes Court at Bombay below Exhibit-60 in R.A.E. & R. Suit No.733/1119 of 2009. By that order, the learned trial Judge allowed the application filed by plaintiff No.1 Satish Balwant Mantri seeking permission to sign the plaint,

subject to payment of costs of Rs.5,000/-. The learned trial Judge permitted plaintiff No.1 to file separate vakalatnama.

4. In support of this Petition, Mr. Tikare invited my attention to the plaint as was originally filed by the plaintiffs. He submitted that plaintiff No.1 Satish Balwant Mantri, plaintiff No.2 Ashok Balwant Mantri and plaintiff No.3 Siddheshwar Temple Trust (for short, 'Trust') instituted suit against (1) Smt. Anusaya Chandrakant Padekar, (2) Kisan Chandrakant Padekar, (3) Balu Chandrakant Padekar and (4) Shekhar Shankar Shetty. The suit was signed by plaintiff No.2 for himself and on behalf of plaintiff No.3. Plaintiff No.1 did not sign the plaint. The plaintiffs relied upon the resolution of the Board of Meeting of the Trust held on 10.5.2007 authorizing the Managing Trustee Ashok Balwant Mantri (plaintiff No.2) to initiate legal proceedings against the defendants herein amongst other things and appointing Ms. Vasudha Narvekar, Advocate to file eviction proceedings. He invited my attention to paragraph-1 of the written statement, where the defendants specifically asserted that the plaint has not been signed by all the Trustees of plaintiff No.3 Trust and, therefore, the suit is bad in law and on this count is liable to be dismissed with costs.

5. Mr. Tikare submitted that subsequently plaintiff No.4 Ulhas Balwant Mantri and plaintiff No.5 Prasad Satish Mantri were added as

plaintiffs. On 17.6.2011, the learned trial Judge framed the issues. One of the issues was whether plaintiff No.3 Trust has authorized plaintiff No.2 to prosecute the suit. Additional issue was framed on 17.3.2016 as to whether the suit is maintainable. He invited my attention to the cross-examination of plaintiff No.2 Ahok Balwant Mantri. During the course of cross-examination he admitted that in the year 2009 when the suit was filed plaintiff No.2 and his brother Satish Balwant Mantri were the Trustees.

6. The defendants filed evidence of affidavit on 8.7.2016 and reiterated that the suit is bad in law as the plaintiffs have not signed the plaint. Mr. Tikare invited my attention to the application filed by plaintiff No.1 Satish Mantri and in particular paragraphs-1 & 2 thereof. In paragraph-1, reference is made to the resolution dated 10.5.2007 and it was stated that it was signed by plaintiff No.1 and plaintiff No.2. He learnt that the defendants have raised the categorical objection that plaintiff No.2 alone has no authority to sign the plaint and the plaint is not signed by plaintiff No.1. In paragraph-2, it is asserted that in order to avoid technical objections, it is just and necessary to rectify the said defect in the plaint and he may be permitted to sign the plaint and vakalatnama. In paragraph-3, it is stated that it is a clerical defect and same can be rectified by allowing plaintiff No.1 to sign the plaint and

vakalatnama. Mr. Tikare submitted that this is not a technical defect but it goes to the root of the matter, namely, maintainability of the suit.

By the impugned order, the learned trial Judge has allowed the application and permitted plaintiff No.1 to sign the plaint as also file separate vakalatnama. Mr. Tikare submitted that the right accrued in favour of the defendants is taken away by the impugned order. He, therefore, submitted that the Petition requires consideration.

7. On the other hand, Ms.Narvekar supported the impugned order. She relied upon Section 153 of C.P.C. to contend that the Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceedings. She submitted that present amendment is necessary for determining the real question or issue raised in the proceedings. In any case, she submitted that no prejudice would be caused to the defendant as the application is allowed subject to payment of costs of Rs.5,000/-.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the plaintiffs have instituted suit against the defendants for eviction of the defendants from the premises in dispute. Order XXXI Rules 1 & 2 of C.P.C. read thus :

**“ORDER XXXI
SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND
ADMINISTRATORS**

1. Representation of beneficiaries in suits concerning property vested in trustees, etc.-- In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or Administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

2 . Joinder of trustees, executors and administrators.-- Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside India, need not be made parties.”

9. In the present case, Rule 2 of Order XXXI is not applicable as there is no *inter se* dispute amongst the trustees. The case is squarely covered by Order XXXI Rule 1 of C.P.C. A perusal of Order XXXI Rule 1 shows that in all suits concerning property vested in a trustee, executor or administrator, **where the contention is between the persons beneficially interested in such property and a third person**, the trustee, executor or administrator shall represent the persons so interested, **and it shall not ordinarily be necessary to make them parties to the suit**. But the Court may, if it thinks fit, order them or any of them to be made parties.

[Emphasis supplied]

10. As noted earlier, the suit is instituted by the Trust and two Trustees against the defendants/tenants and therefore Rule 2 of Order XXXI will not be applicable. The impugned order is also referable to Order XXXI Rule 1 by which the learned trial Judge has permitted plaintiff No.1 to sign the plaint as also file vakalatnama. Mr. Tikare relied upon Order VI Rule 14 of C.P.C. to contend that every pleading is required to be signed by the party and his pleader. In my opinion, said provision is not applicable in respect of Trust more particularly in a case covered by Order XXXI Rule 1 of C.P.C.

11. In view of aforesaid discussion, I do not find that the learned trial Judge has committed any error in passing the impugned order. Hence, the Petition fails and the same is dismissed.

12. It is made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in any 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.)

Deshmane (PS)