

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12071 OF 2019

YAMUNA ALAS USHA KHANDU PATIL ALIAS USHA BHARAT PATIL
VERSUS
VIJAY PURUSHOTTAM PATIL

WITH

WRIT PETITION NO.12072 OF 2019

YAMUNA ALIAS USHA KHANDU PATIL ALIAS USHA BHARAT PATIL
VERSUS
VIJAY PURUSHOTTAM PATIL AND OTHERS

Mr.S.B.Brahme, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 01/10/2019

PER COURT :

1. The petitioner in both these petitions is the original defendant in Spl.C.S.No.39/2011 and is a plaintiff in Spl.C.S. No.25/2011. The petitioner is aggrieved by the identical orders passed by the Trial Court dated 14/03/2019 below Exh.59 in the second suit and below Exh.58 in the first suit, by which the defendant in the first suit, who is the plaintiff in the second suit, has been permitted to amend the plaint as well as the written statement, by imposing costs of Rs.2,000/-.

2. The learned Advocate for the petitioner has strenuously criticized the impugned orders and submits that the very nature of the cause of action would be altered. Reliance is placed on the grounds formulated in the memo of the petitions for challenging the impugned order. The issue of due diligence under Order 6 Rule 17 of the CPC is also raised.

3. I have perused the petition paper books and the impugned orders in the light of the submissions of the learned Advocate for the petitioner. By filing application Exhs.58 and 59 in the 2 suits, Vijay Purushottam has indicated that he stumbled across a proceeding in WP No.3604/1980 and 3243/1980, recently. From the said record, the exact date of the Adoption Deed was noticed to be 16/11/1973, which was earlier erroneously typed in his plaint and written statement as being 1976. He applied for copies in the said 2 petitions and he received the papers from the concerned Courts on 28/09/2018 and has immediately filed the 2 applications on 17/10/2018. I therefore find that the aspect of due diligence is taken care of.

4. Vijay Purushottam has proposed paragraph No.3A to his plaint and to his written statement as well in both the suits. He has

narrated the circumstances in which he stumbled across the exact date of his Adoption Deed being 16/11/1973. The Trial Court has permitted him to add the proposed paragraph No.3A in this backdrop.

5. Considering the above, I do not find that the impugned orders could be termed as being perverse, erroneous or likely to cause grave injustice to the petitioner. Both these petitions, being devoid of merit, are therefore, dismissed.

6. The learned Advocate for the petitioner makes a request that Spl.C.S.No.25/2011 and 39/2011 may be expedited.

7. In view of the above and considering the pendency of the cases at Shahada, the Trial Court would endeavour to decide both the suits as expeditiously as possible and preferably on or before 30/09/2020.

(Ravindra V.Ghuge, J.)