

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

930 WRIT PETITION NO.8856 OF 2016

SHYAM DNYANOBA DHABADGE

.. Petitioner

VERSUS

GANGUBAI DNYANOBA DHABADGE AND OTHERS

.. Respondents

...

Advocate for Petitioner : Shri Manish P. Tripathi

Advocate for Respondent Nos.1 to 3 : Shri K.B. Jadhav

Respondent No.4 – Served.

...

CORAM : P.R. BORA, J.

Dated: July 30, 2019

PER COURT :-

1. Heard finally with consent of the learned counsel appearing for the parties.

2. The order dated 21.07.2016 passed by Civil Judge, Junior Division, Manwat below application at Exh.89 in Regular Civil Suit No.64 of 2010 is challenged in the present petition. The aforesaid application (Exh.89) was filed by the present petitioner, who is the plaintiff in Regular Civil Suit No.64 of 2010, seeking amendment in the plaint invoking Order-VI, Rule-17 of the Code of Civil Procedure. The amendment application was filed by the petitioner – plaintiff to bring on record the fact that, respondent nos.1 to 3 i.e. original defendant nos.1 to 3 have executed a Consent Deed in favour of original defendant no.4 in respect of one of the

properties, which is the subject matter in the suit. The application was opposed by the original defendants and the learned Trial Court vide the impugned order has rejected the said application.

3. Shri Tripathi the learned counsel appearing for the petitioners submitted that, original defendants no.1 to 3, who have taken a bold stand in their written-statement denying the relationship of the present petitioner and original defendant no.4 with deceased Dnyanoba, have noticed to have executed a Consent Deed in favour of defendant no.4 admitting therein that, he is the step brother of defendant nos.2 and 3. The learned counsel submitted that, in the circumstances, the Trial Court must have allowed the plaintiff to amend the suit plaint to that extent. The learned counsel, therefore, prayed for setting aside the impugned order and to allow the application at Exh.89 filed by the plaintiff before the Trial Court.

4. The learned counsel appearing for the respondent has strongly resisted the submissions made on behalf of the petitioner. The learned counsel submitted that, at the fag end of Trial, the petitioner – plaintiff submitted an application seeking amendment, which has been rightly rejected by the Trial Court. The learned counsel submitted that, the Consent Deed, which is referred to and

sought to be brought on record, was executed prior to the date of institution of suit by the petitioner – plaintiff. The learned counsel submitted that, the plaintiff has not made out any case for allowing the amendment at the end of the trial. The learned counsel submitted that, the document, which was in existence prior to institution of the suit, cannot be now permitted to be brought on record. In the circumstances, the learned counsel prayed for dismissal of the writ petition.

5. I have considered the submissions advanced by the learned counsel appearing for the parties. I have also perused the impugned order and the other material placed on record. The learned counsel appearing for the petitioner has tendered across the bar the copy of the written statement submitted by original defendants no.1 to 3 and the Consent Deed dated 01.01.2010. After having gone through the aforesaid documents, it is apparently revealed that, the original defendant nos.1 to 3 who have totally denied the relationship of the plaintiff as well as defendant no.4 with deceased Dnyanoba, have admitted the said relationship in the Consent Deed in so far as defendant no.4 is concerned. It appears to me that, this is a material circumstance, which may be necessary to be brought on record for the effective decision of the suit, which has been filed by

the plaintiff. In the circumstances, the learned trial Judge should not have rejected the request of the petitioner – plaintiff. The said order therefore cannot be sustained and deserves to be set aside and it is accordingly set aside. Consequently, the application filed by the petitioner – plaintiff at Exh.89 stands allowed. The petitioner – plaintiff shall carry out the necessary amendment within two weeks from the date of this order. The Trial Court is directed to expedite the hearing of the suit thereafter and to decide the same within six months thereafter.

6. Writ Petition stands allowed in the aforesaid terms.

(**PR. BORA, J.**)

...