

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11 OF 2019

Kaka s/o Sahebrao Kapse,
Age-36 years, Occu-Agriculture,
R/o Jawalgaon, Tq.Barshi,
Dist.Solapur

-- PETITIONER

VERSUS

1. Maruti s/o Apparao Disle,
Age-Major, Occu-Agriculture,
2. Gangabai w/o Maruti Disle,
Age-Major, Occu-Household,
3. Prakash s/o Maruti Disle,
Age-Major, Occu-Agriculture,
4. Suresh s/o Apparao Disle,
Age-Major, Occu-Agriculture,

Respondent Nos. 1 to 4 all R/o
at Post Jawalgaon, Tq.Barshi,
Dist.Solapur

-- RESPONDENTS

Ms.S.V.Salunke, Advocate for the petitioner.
Mr.M.B.Kolpe h/f Mr.S.B.Choudhari, Advocate for respondent Nos. 1 to 3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 26/09/2019

ORAL JUDGMENT :

1. The petitioner/original plaintiff in RCS No.72/2016 is aggrieved by the order dated 05/01/2018 passed by the Trial Court, by which application Exh.29, filed by defendant Nos. 1 to 3 seeking

amendment to the written statement and withdrawal of certain admissions, has been allowed. Respondent No.4 / original defendant No.4 is not a contesting respondent and therefore leave to delete respondent No.4, is granted. Deletion be carried out forthwith.

2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3. Exh.29 was filed by defendant Nos. 1 to 3 clearly indicating that they desire to withdraw certain statements and admissions given in the written statement, which was originally filed on 21/07/2016. Exh.29 was filed on 22/02/2017 praying for leave to delete certain admissions given and add certain avernments to the written statement. The petitioner had strenuously opposed the said application vide reply at Exh.32. The Trial Court delivered an order on 29/06/2017 allowing application Exh.5 filed by the plaintiff and granted injunction.

4. I find from the impugned order that the Trial Court has merely reproduced the head note in the judgment delivered in Usha Balasaheb Swami Vs. Kiran Appaso Swami [AIR 2007 SC 1663]. There is not a single reason assigned in the impugned order allowing the entire application Exh.29. In my view, an application for

amending the written statement, especially when the amendment is sought to delete certain admission and avernments, which may favour the other side, cannot be lightly permitted. Deletion of certain avernments and statements favouring the plaintiffs, by amending the plaint, is a serious aspect. While delivering such an order, the Trial Court is expected to apply it's mind and only after concluding that the deletion is necessary, that an order could be passed. Imposing costs is not an excuse to allow an application by an order which suffers from lack of reasons.

5. In view of the above, this petition is allowed. The impugned order dated 05/01/2018 is quashed and set aside. Application Exh.29 is restored to the file in RCS No.72/2016.

6. The litigating sides are at liberty to advance oral submissions and cite reported judgments, afresh. The Trial Court shall decide Exh.29 after considering the submissions of the parties, the law cited and by assigning reasons.

7. Rule is made partly absolute in the above terms.

(Ravindra V.Ghuge, J.)