

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7998 OF 2016

Shri Dhondiba Dattatray Sathe .. Petitioner
Vs.
Shri Baliram Dattatray Sathe and ors. .. Respondents

Mr.Rahul B.Vijaymane I/b Mr.Satyajeet A.Rajeshirke, for the
Petitioner.
Mr.Kishor K.Malpathak, for the Respondent No.2.
Ms.Sneha Bhange I/b Mr.Chaitanya Nikte, for Respondent No.4.

CORAM : M.S.KARNIK, J.

DATE : 30th AUGUST, 2019

P.C. :

- . Heard learned Counsel.
2. The petitioner challenges the order dated 10/02/2016 passed by the trial Court below Exhibit 131 rejecting the application made by defendant for permission to file separate written statement on behalf of the defendant No.1.
3. Respondent No.1 is the original plaintiff. The

petitioner is the original defendant No.1. Regular Civil Suit No. 1032 of 2006 is filed by the plaintiff for partition and separate possession. The petitioner had initially filed purshis and admitted the Suit of the plaintiff along with original defendants No.3 & 5.

4. By filing the application below Exhibit – 120, it was contended by the petitioner that he was not having knowledge of the affidavit of his father sworn before Tahsildar, Pune on 22/07/1983. The defendant got knowledge when he found the original affidavit of his father. In the affidavit it is mentioned that Gat No. 362 admeasuring 2H.48.9 R situated at Village Kule, Taluka – Haveli, District – Pune was to be transferred in the name of defendant No.1 and accordingly said share was allotted to defendant No.1. Accordingly by order dated 02/11/2000, 62.8 R land from the said Gat number was transferred in the name of defendant No.1 and 1 H 86.1 R land was transferred to the name of defendant No.4 – Bhagwan Dattatray Sathe. By the amendment, defendant No.1 therefore

prayed for partition of the remaining property by allotting share of defendant No.1.

5. The said application was opposed by the plaintiff and defendants No. 2 & 4. Mr.Malpathak appearing on behalf of respondent No.2 & Ms.Sneha Bhange appearing on behalf of respondent No.4 supported the order passed by the trial Court. Learned Counsel submitted that nothing has been placed on record by the petitioner to explain as to why the affidavit dated 22/07/1982 was not placed on record when the purshis was filed accepting the case of the plaintiff. Moreover, the purshis earlier filed seeking similar relief was turned down vide order dated 10/02/2016. My attention is invited to the order dated 10/02/2016 which is at page 50 of the paper-book by which the application Exhibit 131 came to be rejected. The trial Court rejected the application on the ground that defendant No.1 admitted the claim of the plaintiff on 11/12/2007 and the application Exhibit 131 is moved on 10/04/2015. The Trial Court further observed that defendant No.1 wants to withdraw

the admission which was given by admitting the claim of plaintiff vide purshis Exhibit 49. The application was therefore rejected.

6. Heard learned Counsel for the parties. Though the application is opposed by learned Counsel for respondents No.2 & 4, the plaintiff failed to remain present in this Court despite service of notice by advocate for the petitioner and affidavit of service is filed by the petitioner having served the respondent No.1 – original plaintiff.

7. By filing the said application Exhibit 131, the petitioner wanted to file written statement bringing on record affidavit sworn by his father on 22/07/1982. Learned Counsel for the petitioner states that though the claim for partition is admitted, the said filing of the written statement would be essential in view of the knowledge about the said affidavit as he can now make a request to partition the remaining property by allotting share of defendant No.1 as mentioned above. In my

opinion, there is no withdrawal of the admission as the Suit is still for partition and even the defendant No.1 wants the partition of the suit property. In my opinion, there was no difficulty for the trial Court in allowing defendant No.1 to file the written statement. The application for amendment was made at the time when plaintiff's evidence was being recorded. The Suit is for partition, therefore, in order to determine the petitioner's lawful share in the suit preemies, it would be necessary to give opportunity to file written statement.

8. The plaintiff has not appeared in this Court. However, present Petition deserves to be allowed by imposing costs of Rs.10,000/- payable by petitioner to the respondents No. 2 & 4 i.e. Rs. 5,000/- each to the respondents No. 2 & 4. The Petition is therefore allowed. Impugned order is set aside. Application Exhibit 131 is allowed.

(M.S.KARNIK, J.)