

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 WRIT PETITION NO.5052 OF 2009

1. Shankarsingh s/o Chagansingh Pardeshi,
Age 72 years, Occ. Business,

2. Yogesh s/o Shankarsingh Pardeshi,
Age 40 years, Occ. Business,

Both R/o. Sutar Galli,
At an Post. Tq. Sangamner,
District Ahmednagar

...Petitioners

versus

Narendra s/o Vasant Rao Saraf,
Age 57 years, Occ. Bond Writer,
R/o. Sutar Galli,
At, Post and Taluka Sangamner
District Ahmednagar

...Respondent

.....
Advocate for Petitioners : Mr. L.V. Sangeet
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CORAM : V. K. JADHAV, J.
DATED : 13th FEBRUARY, 2020

ORAL JUDGMENT:-

1. Heard learned counsel for the petitioners. None appears for the respondent though duly served with the Rule notice.

2. The petitioners are the original plaintiffs. The petitioners have instituted suit bearing Regular Civil Suit No 215 of 2001 for decree of perpetual injunction and mandatory injunction. The respondent-defendant has appeared and strongly resisted the suit by filing written statement. Pending the suit, the petitioners-plaintiffs have

filed three applications. The application Exh.36, application Exh.42 and application Exh.46, respectively. So far as the application No.36 is concerned, the petitioners-plaintiffs have prayed for permission to ask question to the witness of the plaintiffs in his further examination in chief pertaining to disputed agreement. So far as the application Exh.42 is concerned, the same was filed under Order VI Rule 17 of C.P.C. for amendment in the plaint. So far as the application Exh.46 is concerned, it was filed for permission to produce the documents. The trial court by separate orders on 10.6.2009 rejected the applications Exh.36, 42. In so far as the application Exh.46 is concerned, the same came to be filed. Hence, this writ petition.

3. Learned counsel for the petitioners submits that the petitioners who are father and son interse, jointly instituted the suit in respect of joint property and since petitioner No.2, who happened to be the son, was in the witness box by filing his affidavit of evidence under Order XVIII Rule 4 of C.P.C., certain questions were required to put to him pertaining to disputed agreement. Learned counsel submits that in terms of provisions of Order XVIII Rule 4 of C.P.C. the parties on examination-in-chief of a witness by way of affidavit and parties may rely upon the documents. Though the petitioners plaintiffs have adduced the evidence by way of affidavit, certain questions pertaining to the disputed documents are necessary to be put to the witness (petitioner No.2). Learned counsel submits that the trial court has erroneously rejected the application Exh.36. Learned

counsel submits that so far as the application Exh.42 is concerned, the amendment sought by the petitioners-plaintiffs is formal in nature and would not change the nature of the suit. The trial court however, rejected the application Exh.42 without any justifiable reason.

4. I do not find any substance in this writ petition. So far as the order below Exh.36 is concerned, the plaintiffs sought permission to put certain questions to the witness to refer the documents of agreement which is in dispute. Learned Judge of the trial court has rightly observed in the impugned order passed below Exh.36 that the said agreement which is in dispute was not exhibited, as the witness (petitioner No.2 herein) was not a party to the document. He was neither the signatory of the document as a party nor attesting witnesses thereof. He was also not scribe of the document. The plaintiffs could have examined the plaintiff No.1 to prove the contents of the said agreement if the petitioner-plaintiff No.1 is party to the said document or if he is attesting witness or scribe, as the case may be. It is for the plaintiffs to prove the said disputed agreement and merely by referring the said disputed document, it cannot be exhibited and read in evidence. In terms of the provisions of Order XVIII Rule 4 first proviso, the proof and admissibility of such documents shall be subject to the orders of the Court. I do not find any fault in the impugned order passed by the trial court below Exh.36.

5. So far as the application Exh.42 is concerned, the plaintiffs have sought amendment to the extent of insertion of words "will deed" in para No.2 line No.2 of the plaint so also in para 4 to the extent that "Mathurabai died on 22.10.1999". It is necessary to refer to pleadings of the plaintiffs. It has been pleaded in the suit that the petitioners become owners in possession of the suit property on the basis of the gift deed. Learned Judge of the trial court has also observed in his impugned order passed below Exh.42 that the plaintiff No.2 has adduced his evidence at Exh.31 wherein he has also specifically referred that they got title on the suit property by virtue of gift deed. In the backdrop of these, the amendment sought to the extent of will deed even without deleting the word "gift deed" in para 2 of the plaint in second line, appears to be with some ulterior motive. Furthermore, when the respondent-defendant has denied the title, the said amendment pertaining to death of Mathurabai was sought for the first time in para 4 of the plaint. It has been stated in the application Exh.42 that the suit property bearing City Survey No. 2546 has come to petitioner-plaintiff No.1 in the year 1963 on the basis of will deed executed by one Sonubai. It has been further stated in the application that plaintiff No.1 had given the said property to his mother Mathurabai by way of gift deed and thereafter on 18.3.1983, said Mathurabai had given the said property by way of will deed again to petitioner-plaintiff No.1. However, it appears that the said contents are vague in nature even after the evidence is led to the extent of gift deed, the amendment sought to the extent of

insertion of word “will deed” is without even deleting the first contention of the “gift deed”. In view of above, I do not find any fault in the order passed by the trial court in rejecting the application seeking such vague amendment in the pleadings. It is also not clear as to why on the earlier occasion before the trial is commenced, the petitioners-plaintiffs could not file such application for carrying out the amendment. Since the writ petition is liable to be dismissed as against the order passed by the trial court below Exh.42, application Exh.46 would be meaningless. The trial court has rightly passed order on the said application as filed. In view of the above, I proceed to pass the following order:-

O R D E R

Writ petition is hereby dismissed. Rule discharged.

(V. K. JADHAV, J.)

rlj/