

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

922 WRIT PETITION NO.2045 OF 2020

SHIVAJI NAGNATH KOSHTI
VERSUS
UTTAM NAGNATH KOSHTI AND OTHERS

...

Mr. D.A.Madke, Advocate holding for
Mr. S.Y. Mahajan, Advocate for the petitioner.

...

CORAM : **Rohit B. Deo, J.**

DATE : 31st January 2020.

ORDER :-

. The petitioner is the plaintiff in Regular Civil Suit No.213/2009 who is aggrieved by the order dated 18.04.2018 whereby the trial Court rejected the application seeking permission to amend the plaint.

2. Vide judgment and decree dated 26.11.2013 Regular Civil Suit No. 213/2009 brought for partition and separate possession was dismissed. The plaintiff preferred Regular Civil Appeal No. 376/2013 which is allowed by the judgment and decree dated 18.02.2016 rendered by District Judge-3, Osmanabad. Paragraph 25 of the judgment in appeal read thus :

“25. An entire edifice of the averments and cause of action swirl around these two documents. The court thinks it fit that there would be no prejudice to the right of defendants, in case these documents are taken on record. In other words, it is justifiable to allow the plaintiff to tender additional evidence of these documents. I find substantial reasons, as envisaged in the application, so as to accord the relief under Order 41 Rule 27 of C.P.C. With these observations, disagreeing with the submissions of learned counsel for defendants, the application Ex.14 deserves to be allowed”.

3. The operative part of the judgment in appeal is thus :

1 The appeal is allowed.

2 The impugned judgment & decree in RCS No.213/09 passed on 26.11.2013 by the learned II nd Joint Civil Judge, Junior Division, Tuljapur is set aside and remanded back to the trial Court.

3 he prayer of appellant/plaintiff vide application Ex.14 for additional evidence under Order 41 Rule 27 of Civil Procedure Code is allowed subject to costs of Rs.1,000/- (Rs.One Thousand only) to be deposited in the trial court within 15 days from appearance on 18.03.2016.

4 The Trial Court is directed to expeditiously decide the suit after fullest opportunity to the the parties with liberty to the parties to lead additional evidence.

5 The parties shall appear before the Trial Court on 18.03.2016.

6 The record and proceeding be sent back to the trial Court forthwith.

7 The parties shall bear their own costs.

8 Decree be drawn up accordingly.

4. Instead of co-operating with the trial Court in expeditious disposal of the appeal, the plaintiff preferred an application dated 15.07.2016, which if allowed, would turn the pleadings on its head. The plaintiff sought to change the nature of the suit from that for partition and separate possession to suit for declaration of ownership and possession. Several paragraphs in the plaint were sought to be deleted and several averments were sought to be introduced. Certain averments, which the defendants branded as “admissions”, were sought to be deleted.

5. The trial Court rightly noted that the order of remand was restricted to permit the plaintiff to lead additional evidence as regards the two documents referred to in the remand order. It is further noted that the averments intended to be deleted and added would change nature of the suit.

6. I do not see any error in the order of the learned trial Court.

7. The petition is dismissed.

(ROHIT B. DEO, J.)

VD_Dhirde