

CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3027 OF 2019

Mr.Prajakt Arjunwadkar, for Petitioner.
Mr.Mahesh Vijay Rawool, for respondent Nos.1, 2 and 4.

DATED : 7TH SEPTEMBER 2021.

1] This Writ Petition takes an exception to the order dated 07.08.2018 passed by the learned Civil Judge Senior Division, Gadahinglaj below Exhibit 46 in Special Civil Suit No.11/2015..

2] The Respondent No.1 herein has filed suit for partition and separate possession against the present Petitioner and Respondent Nos.2 to 4. The Respondent no.2 while opposing the suit filed joint written statement with the Petitioner. The Respondent no.2 in the said written statement admitted execution of gift deed in favour of the Petitioner. The Respondent No.2 after filing the said written statement moved an application under Order 6 Rule 17 of the CPC seeking permission to amend

the written statement. In the said application, Respondent No.2 has stated that the Petitioner got executed the gift deed from her in her favour by playing fraud. Respondent No.2 has further stated that written statement was not read over to her and her thumb impression was obtained on the written statement by deceiving her.

3] The trial court by the order impugned instead of allowing the application for amendment allowed the Respondent No.2 to file separate written statement.

4] Learned counsel for the Petitioner submits that the trial court has granted the relief which was not sought for. It is submitted that the trial court ought not to have entertained the application filed by the Respondent No.2, as it is not permissible to withdraw the admissions in the pleadings by amending the pleadings. It is submitted that the order impugned thus, needs to be quashed and set aside.

5] On the other hand, learned counsel for the contesting Respondent has supported the order passed by the trial court. It is submitted that the Respondent No.2 has already filed the suit for cancellation of gift deed against the Petitioner. It is submitted that considering the facts and

circumstances of the case, no interference is called for in the impugned order.

6] From the submissions, it appears that the Respondent No.2 has filed separate suit for cancellation of gift deed.

7] Considering the facts and circumstances of the case, in my view, the trial court was justified in allowing Respondent No.2 to file separate written statement. However, the contentions of the Petitioner in respect of alleged admissions of Respondent No.2 in the joint written statement filed by her along with the Petitioner are kept open and the Petitioner is permitted to raise the said contentions at the time of final hearing of the suit.

7] With these directions, Writ Petition stands disposed of.

[N.R.BORKAR,J]