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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4158 OF 2019

Tukaram Khashaba Hirve through
his POA

....Petitioner

V/s.

Ankush Rajaram Malavade and others

.....Respondents

Ms. Manisha A. Devkar for the Petitioner

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 23, 2021.

P.C.:

1] Petitioner initiated Regular Civil Suit No. 73 of 2000 in the court of Civil Judge Junior Division, Dahiwadi whereby praying Decree for declaration that he is the owner of Suit property and Respondent-Defendant be restrained from interfering with his peaceful possession.

2] It is the case of the Petitioner that Defendant got executed sale deed in his favour by coercion and physical force. In the aforesaid

background, at the time of final arguments, Application Exhibit 122 came to be moved seeking permission to lead evidence of the Petitioner or to recall witnesses, which prayer was rejected vide impugned order dated February 5, 2019.

3] By inviting attention of this court the judgement in the matter of **K. K. Velusamy Vs. N. Palanisamy [2011 (2) Supreme 667]** particularly paragraph 13 and 16, the submissions are, even if the Suit is at the stage of final arguments, in the interest of justice it is always open for the Civil Court to entertain interlocutory Applications like the one moved in the present Suit. According to her in case if the evidence which is already recorded in the form of cross examination is not explained by way of re-examination as provided under section 138 of the Evidence Act, substantial prejudice will be caused.

4] A further contention is, in the interest of justice, Application needs to be allowed thereby permitting the Petitioner to lead additional evidence.

5] I have considered aforesaid submissions in the light of the reasons furnished by the Trial Court so also other proceedings which are produced on record along with compilation.

6] It appears that evidence of the parties is already concluded and present Application can be read either under Order XVIII Rule 17 or Section 151 of the CPC.

7] No doubt the submissions of the learned counsel that an Application, interlocutory in nature can be entertained at any stage even if the Suit proceedings are at the stage of final arguments as can be inferred from the judgment of **K. K. Velusamy** [cited Supra], however for exercising such powers i.e. to show intervention at such stage in extraordinary jurisdiction, Apex Court has laid down certain parameters Viz. whether palpable injustice will be caused to the party, whether he was denied an opportunity at an appropriate stage of the proceeding and there was a valid and sufficient cause as to why the evidence was not produced or lead on earlier occasion.

8] Learned counsel for the Petitioner has tried to canvas that it is necessary in the interest of Justice so as to prove the case, However, the Court needs to be sensitive to the fact that Suit is pending since last almost about 20 years. Petitioner was not diligent in perusing his right. By way of this Petition, Petitioner is trying to turn the clock to the stage of recording of evidence.

9] The Suit has reached at the fag end i.e. final augment. Earlier attempts on the part of the Petitioner to amend the Suit were turned down thereby observing that Petitioner is trying to protract the litigation.

10] As far as the order impugned is concerned wherein the prayer of the Petitioner for permission to lead additional evidence came to be rejected, it can be noticed that Petitioner has not made out a case wherein he could establish that at relevant time he was unable to canvas the case which now he intends to. Attempt on the part of the Petitioner is nothing but to cover up shortfalls which in any case is not permissible.

11] That being so, no case for interference is made out. Petition as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]