

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4938 OF 2021

SHANTABAI JAGANNATH PATIL MARATHE DECEASED AND ANOTHER
VERSUS
BHIDAS HARCHAND PATIL SINCE THROUGH LRS BHAGIRATHI
ALIASASHABAI BHIDAS PATIL AND OTHERS

Mr.Mukul S.Kulkarni, Advocate for the petitioners.
Mr.Amol S.Sawant, Advocate for respondent No.2B.

(CORAM : BHARATI H. DANGRE, J.)

DATE : JANUARY 20, 2022

PER COURT :

1. The respective learned counsels for the parties informed that the Trial Court has scheduled the suit for arguments today indicating that it is at it's culmination.

2. The original plaintiff is one Shantabai, who filed Spl.C.S.No.84/1999 for partition and separate possession. In the said suit, the present petitioner was impleaded as defendant No.6, but on her death, he was transposed as plaintiff No.2 with a clarification being issued by the learned Civil Judge, Sr.Division, Dhule on 12/03/2020 to the effect that the issue as to his status as a legal heir of the original

plaintiff Shantabai will be decided through trial while determining issue No.3, being settled about legality of the alleged Adoption Deed. It is pertinent to note that the suit was directed to be expedited.

3. The plaintiff moved an application under Order VI Rule 17, when the evidence was yet to be adduced and he sought insertion of paragraph No.7A as a part of the pleading, where he pleaded that the original plaintiff Shantabai had executed a Will on 23/05/2007 where she has bequeathed the suit property in his favour and since he is the adopted son, he has inherited the rights to the suit property in the said capacity. It is pertinent to note that barring the said pleading, he did not seek any relief based on the said pleading necessarily no issue to that effect is settled by the Court, till date when the application for amendment came to be rejected under the impugned order.

4. Perusal of the impugned order will reveal that the learned Judge, by taking recourse to the proviso appended to Order VI Rule 17 of the CPC, by reasoning that no due diligence has been adopted by plaintiff No.2, in bringing the Will which ought to have been brought on record when the application is moved for his transposition as plaintiff No.2,

the same came to be rejected. Another ground which persuaded the learned Court to reject the application is the long pendency of the suit.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent. On perusal of the application filed under Order VI Rule 17, and the impugned order in the backdrop of the issues that has been settled by the learned Court on 03/02/2021 and particularly issue Nos.3 to 5 to the following effect :-

"3. Does plaintiff (now plaintiff No.1) prove that, as per adoption deed dated 28.12.1998, plaintiff adopted defendant No.6 (now plaintiff No.2) as her son ?

4. Whether the plaintiff (now plaintiff No.1) proves that, she has undivided share in the suit properties ? If yes, to what extent and in which of the suit properties ?

5. Is the plaintiff (now plaintiff No.1) entitled for partition and possession of the share ?"

5. Since it is specifically argued by the learned counsel for the petitioner that the alleged Will is already exhibited as Exh.266 through Shri Bhausaheb Ravan Patil P.W.No.4 and is marked as Exh.266 and document is already on record and has been exhibited despite an objection being raised by the otherside, the proposed amendment in

form of Paragraph No.7A do not plead anything else than about the existence of a Will dated 23/05/2007. Merely because the document has been exhibited, do not lead to a conclusion of proof of its contents and it is always open for the party to raise a cloud about the same.

In the wake of the above, in my considered opinion, since the Will is already exhibited, the amendment being allowed by inserting paragraph No.7A in the plaint, do not change either the nature of the proceedings nor does it cause any prejudice to the otherside, since it is open for the defendants to dispute the contents of the said document and the entitlement of the plaintiff flowing from the same. Needless to state that merely because of insertion of existence of a Will has been permitted to be incorporated by allowing an amendment and inserting paragraph No.7A in the plaint, will not give rise to any issue about the authenticity of the Will and the defendant is permitted to argue to that effect and the learned Judge shall proceed with the hearing the final arguments today itself, without the Will being issue for consideration before the Trial Court in the suit.

6. With the aforesaid, the writ petition is allowed, it is made clear that the proceedings in the suit shall not be postponed only on the

ground that the amendment is granted today.

7. The learned counsel for the petitioners undertakes to appraise the counsel appearing in the Trial Court about this order being passed.

(BHARATI H. DANGRE, J.)