

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.14865 OF 2019

Ramraj Vitthal Dandage
Age: 46 years, Occu. Business,
R/o. Dindayal Nagar, Bhusawal,
Taluka-Bhusawal,
District – Jalgaon

... Petitioner

Versus

1. Laxmi Sridhar Chaudhari
Age: Major years, Occu. Service
R/o. Flat No.206, Shankheshwar Darshan
Subhash Road, Falna,
Rajasthan
2. Smt. Rekha Anand Ramani
Age: years, Occu. Household
3. Nilam Krushna Ramani
Age: years, Occu. Household

Respondent Nos. 2 & 3
R/o. Sindhi Colony,
Bhusawal, Dist. Jalgaon.

... Respondents

...
Advocate for Petitioner : Mr. Ameya N. Sabnis
Advocate for Respondent Nos. 1 to 3 : Mr. Zafar M. Pathan
...

CORAM : NITIN B. SURYAWANSHI, J.

**RESERVED ON : 14th JUNE, 2022
PRONOUNCED ON : 05th SEPTEMBER, 2022**

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally by the consent of the parties.

2. This petition filed under Article 226 and 227 of the Constitution of India takes exception to the judgment and order dated 13-02-2019 passed by the learned 5th Joint Civil Judge, Junior Division, Bhusawal, below Exhibit-69 in R.C.S. No.209/2012.

3. Respondent No.1/plaintiff filed the suit for cancellation of sale deeds dated 05-03-2012 and 22-03-2012 executed by defendant Nos. 1 to 3 and declaration that they are not the owners of the suit property. Permanent injunction is sought that the suit property shall not be sold by the defendants to anybody and a declaration is sought that the plaintiff is owner and possessor of the suit property. The defendants resisted the suit by filing written statement. The petitioner/defendant No.1 filed written statement wherein it is averred that on the day of execution of the sale deeds, he was not aware as to what documents were prepared by defendant Nos. 2 and 3. He was suffering from stomach problem and without reading the documents, he signed on them, at the instance of defendant Nos. 2 and 3. He has signed both the sale deeds without reading the same.

4. Thereafter, application Exhibit-53 was filed by defendant No.1 seeking amendment in the written statement. He sought to delete the statement about '*he signed the sale deeds without reading them*'. The said application was rejected by the trial Court

and the said rejection is confirmed by this Court in Writ Petition No.939/2018, by order dated 24-01-2018.

5. The defendant No.1 thereafter filed application Exhibit-69 seeking permission to file additional written statement. By relying on the observations of this Court in the writ petition, said application is rejected by the trial Court. Hence, the preset petition.

6. Heard Mr. Ameya N. Sabnis, learned advocate for petitioner and Mr. Zafar M. Pathan, learned advocate for respondents.

7. Learned advocate for petitioner assailed the impugned order contending that the defendant is entitled to take inconsistent pleas in the written statement, therefore, the trial Court ought to have allowed the application and permitted the petitioner/defendant No.1 to file additional written statement. By relying on the decision in *Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others, (2007) 5 SCC 602*, he submits that no prejudice is likely to be caused to the plaintiff if the defendant is permitted to file additional written statement.

8. Per contra, learned advocate for respondents strenuously opposed the petition by placing reliance on *M. Revanna Vs. Anjanamma (dead) by L.Rs. And Others, (2020(1) Mh.L.J. 143)*,

Smt. Suryakanta Ishwar Lohkare and Others Vs. Smt. Annapurna Nilkanth Shende and Another, (2014(7) ALL MR 540), The Shambhavi Co-op. Housing Society Ltd. Vs. Shri Shrikrishna Talak, (2017(2) ALL MR 611), Smt. Jayashree Subhash Kalbande and Another Vs. Shri Bhaurao Nagorao Derkar and Others, (2014(3) ALL MR 605), Abdul Razak (D) Through L.Rs. And Others Vs. Mangesh Rajaram Wagle and Others, (2010 AIR SCW 1414), Steel Authority of India Ltd. Vs. Union of India and Others, (AIR 2006 SC 3229), P. A. Jayalakshmi Vs. H. Saradha and Others (AIR 2009 SC (Supp) 2041) and Vidyabai and Others Vs. Padmalatha and Another (AIR 2009 SC 1433). He submits that the trial has already commenced in the year 2013. Issues are framed on 30.10.2013. Affidavit of examination-in-chief of the plaintiff is filed on 11.03.2016. Further, plaintiffs additional examination in chief is recorded. To overcome the rejection of the application filed by the defendant No.1 under Order VI Rule 17 of the Code of Civil Procedure, the application Exhibit-69 is filed, which is rightly rejected by the trial Court. He submits that there is no substance in the petition and the petition may be dismissed with costs.

9. Admittedly, the application Exhibit-53 filed by the petitioner, under Order VI, Rule 17 of the CPC, seeking amendment in the written statement, praying for deletion of statement about

him signing the sale deeds without reading them, is rejected on merits by the Trial Court. The order of rejection by the Trial Court is confirmed by this Court in Writ Petition No.939 of 2018.

10. In this background, application Exhibit-69 filed by defendant No.1 seeking permission to file additional written statement is required to be considered. In view of the fact that by seeking permission to file additional written statement, said amendment is sought to be brought on record by defendant No.1, which is nothing but an attempt on the part of defendant No.1 to bring on record the rejected amendment, by way of additional written statement. The nature of defence proposed in the present additional written statement is totally different than his defence in the written statement. The Trial Court has observed that by way of present additional written statement, defendant No.1 is seeking to bring entirely new and different defence. The Trial Court has rejected the reasons mentioned in the application that defendant No.1 did not read written statement when it was filed. According to the Trial Court, no reasonable explanation is given by him for not reading the written statement at the time of filing it. The Trial Court, therefore, has come to the conclusion that allowing the application will cause great injustice to the plaintiff.

11. It is a matter of record that issues in the suit are

framed on 30th October, 2013. The plaintiff has filed his affidavit in lieu of examination in chief on 11th March, 2016. Thereafter, the plaintiff's additional examination in chief is recorded. Thus, the Trial has commenced.

12. There appears substance in the contention of the plaintiff that to overcome the rejection of application Exhibit-53, filed by defendant No.1, under Order VI, Rule 17 of the Civil Procedure Code, present application Exhibit-69 is filed. The Trial Court has passed a well reasoned order, which need not be interfered in the extraordinary writ jurisdiction of this Court.

13. In "**Usha Balasaheb Swami** (*supra*), it is held that -

"19. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

20. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case (see B.K. Narayana Pillai V. Parameswaran Pillai (2000(1) SCC 712) and Baldev Singh V. Manohar Singh (2006 (6) SCC 498)"

14. However, in the peculiar facts and circumstances of the

present case, the ratio in this citation would not help the case of the petitioner.

15. In *The Shambhavi Co-op. Housing Society Ltd.* (supra) this Court has held that amendment of written statement is taken more liberally than amendment of plaint. However, by way of amendment self-destructive pleas in written statement cannot be permitted. This ratio supports the case of the respondents.

16. In *Abdul Razak (D) Through L.Rs.* (supra), the Hon'ble Apex Court has held that certiorari/supervisory jurisdiction cannot be exercised by the High Courts as if they are adjudicating appeal against orders of lower Courts or judicial/quasi judicial bodies/authorities.

17. In the light of aforesaid reasons, there is no substance in the challenge raised by the petitioner to the impugned order. Writ petition, being devoid of any merit is dismissed. No costs. Rule discharged.

(NITIN B. SURYAWANSHI, J.)