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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10901 OF 2019

Ramchandra Bhaga Kharat

PETITIONER

VERSUS

Bhaga Sakharam Kharat LRs and Others

RESPONDENTS

.....
Mr. K. N. Shermale, Advocate for the petitioner

Mr. Ajay T. Kanawade, Advocate for respondents No.1a to 1d & 7

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 10th AUGUST, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by the learned Civil Judge, Senior Division, Sangamner below Exhibit-218 in Regular Civil Suit No. 243 of 2012, thereby allowing the application filed by respondents No.1A to 1D, original defendants, for amendment to the written statement.

2. The petitioner being plaintiff No.1 filed Regular Civil Suit No. 243 of 2012 seeking a declaration that he is adopted son of defendant No.1 and plaintiff No.2, who is his mother and wife of defendant No.1 and the sale deeds executed by defendant No.1,

which are described in the plaint are not binding on him. He also sought a declaration that he, being the adopted son of defendant No.1, is the owner of the suit property. Alternatively, he has also prayed that if he is not held to be sole owner of the suit property, then it be declared that he has two third share in the suit property along with plaintiff No.2 and the defendants. The Plaintiff thereafter transposed plaintiff No. 2 as defendant No.7.

3. Defendant No.1 – father, by filing written statement admitted all the pleadings in the plaint. Defendants No.3 to 6, however, resisted the suit.

4. During the pendency of the suit, defendant No.1 expired and his daughters defendants No.1A to 1E were brought on record as his legal representatives. They filed written statement Exhibit-113 on 9th June, 2008, thereby admitting the pleadings in the plaint, they have also averred that they have permanently relinquished their right in the suit property, in favour of plaintiff No.1 and that they have no objection if the alternative prayer of partition is allowed.

5. The plaintiff, thereafter sought amendment in the plaint, which was rejected by the Trial Court, however, by order dated 2nd December, 2015, passed by this Court in Writ Petition No.

2140 of 2013, his amendment application was allowed and the suit was directed to be expedited. Accordingly, the plaintiff carried out the amendment. Thereafter, the plaintiff filed his affidavit in lieu of in chief. He was cross examined on behalf of defendants No.3 to 6. He, thereafter filed his evidence closure pursis on 5th February, 2019. Thereafter the matter was posted for recording evidence of defendants No.1A to 1E, who sought adjournments for leading evidence.

6. On 18th April, 2019, defendants No.1A, 1B, 1C, 1D and 7 filed application Exhibit-218 seeking amendment to the written statement (Exhibit-113) contending that defendant No.7 was originally impleaded as plaintiff No.2 in the suit by taking disadvantage of the fact that she was illiterate. Plaintiff No.1 has no relation with her. The plaintiff was never adopted by defendant No. 7 and deceased defendant No.1. When this fact was realized by defendant No.7, she refused to co-operate with the plaintiff. The plaintiff wanted to grab the estate of the defendants, worth lakhs of rupees. So as to extinguish rights of the defendants in the suit property, the plaintiff adopted various tactics and as part of the same, the plaintiff got written statement of the defendants Exhibit-113 prepared through Advocate Shri. J. K. Pawar, which contains a statement that

defendants No.1A to 1E have relinquished their right in the suit property in favour of the plaintiff. It is also averred in the written statement that the defendants admit the pleadings of the plaintiff. The defendants claimed that they do not know advocate Shri. J. K. Pawar and they are rustic, illiterate village ladies. They do not know the legal procedure. At the time of preparing the written statement (Exhibit-113), they were also told that their rights in the suit property will remain intact. They were told that it is mentioned in the written statement that the plaintiff is not adopted son of defendant No.1. By misleading the defendants, their thumb impressions were obtained on the written statement Exhibit-113. In fact the defendants have never relinquished their rights in the suit property, in favour of the plaintiff. No registered relinquishment deed is executed by the defendants. In absence of relinquishment deed, rights of the defendants cannot be extinguished. Because of the wrong stand adopted by the earlier advocate, the defendants are likely to be deprived of their valuable right in the suit property. So as to bring true and correct facts before the Court, the defendants sought amendment in the written statement (Exhibit-113) thereby deleting the averment that defendant No.1 and plaintiff No.2 decided to adopt plaintiff No.1 and the defendants admit adoption deed dated 5th December, 1988. They also sought to

delete the statement that they have relinquished their right in the suit property in favour of the plaintiff.

7. The said application (Exhibit-218) was resisted by the plaintiff, by filing a detail say, contending that the trial has commenced and the defendants are trying to withdraw the admission given by them in the written statement. The Trial Court held that since defendant No.7 has not filed written statement, the application Exhibit-218 filed by her is not maintainable. The Trial Court made it clear that since the amendment sought by defendant No.7 is rejected, no amendment in her respect should be made. The Trial Court, however, allowed the application filed on behalf of defendants No.1A to 1D, by imposing costs of Rs.3000/-. The plaintiff is aggrieved by this order.

8. Heard learned advocate for the petitioner and learned advocate for respondents No.1A to 1D and 7.

9. Learned advocate for the petitioner assailed the impugned order submitting that the written statement is filed by the defendants No.1A to 1D in the year 2008 and thereafter, the present amendment is sought in the year 2019, that too, after the trial has commenced and after his evidence is over.

Therefore, it should not have been allowed by the Trial Court. He further submits that the defendants are trying to withdraw the admission given by them, which is not permissible in law. In support of his submissions, he relied on following citations:

1. *"Ram Niranjana Kajaria V/s Sheo Prakash Kajaria" 2016 (3) Mh.L.J. 172*
2. *"Hiralal V/s Kalyamnal" (1998) AIR (SCW) 219*
3. *"Rajkumar Gurawara V/s S. K. Sarwagi and Company Private Limited and Another" 2008 (14) SCC 364*

10. Per contra, learned advocate for the respondents supported the impugned order contending that the written statement Exhibit-113 was filed at the instance of the plaintiff by misleading the defendants No.1A to 1E and by taking advantage of the fact that they are rustic village ladies and they are illiterate.

11. I have given thoughtful consideration to the rival submissions made by both the learned advocates. The Trial Court has allowed application Exhibit-218 on the ground that the burden of proving the pleadings in the plaint is on the plaintiff and by allowing the amendment, the burden is not likely to be affected. However, if the amendment is not allowed, serious

prejudice is likely to be caused to the defendants. Therefore, the Trial Court held that in the interest of justice and in the interest of defendants No.1A to 1D, the amendment is necessary and is required to be allowed.

12. The record indicates that defendants No.1A to 1E have put their thumb impressions below the written statement (Exhibit-113). Admittedly, defendant No.7 was initially plaintiff No.2 and later she was transposed as defendant No.7, by the plaintiff. In these peculiar facts there appearance substance in the contention of the defendants No.1A to 1D that by misleading them, their thumb impressions were obtained on the written statement (Exhibit-113), which was prepared at the instance of the plaintiff. In this view of the matter, the amendment sought by the defendants No.1A to 1D cannot be said to be *mala fide*.

13. Valuable rights of defendants No.1A to 1D in the ancestral property are involved in the matter, which in terms of the averments made in the written statement (Exhibit-113) they have relinquished in favour of the plaintiff. It cannot be disputed that merely by making a statement in the written statement, the defendants cannot relinquish their right in the suit property. Naturally, the burden would be on the defendants to prove the averments in the written statement, so also the burden would be

on them to prove that the admission given by them in the written statement Exhibit-113 was given under misconception and / or their thumb impressions were obtained on Exhibit-113 by misleading them.

14. It is a settled legal position that liberal approach needs to be adopted while considering the application for amendment. Merits of the amendment cannot be gone into by the Trial Court at the time of deciding the application for amendment, however, it would be for the Trial Court to decide the merit of the proposed amendment, at the time of the final decision of the suit. By allowing the amendment, burden to prove his case is not likely to be shifted from the plaintiff. The burden will be on the defendants to prove the averments made in the proposed amendment. The amendment is necessary for proper and effective adjudication of the suit. If the amendment is refused, it would cause injustice to the defendants. The amendment does not fundamentally change nature and character of the suit.

15. The Trial Court has given proper reasons while allowing the amendment application. The Trial Court has properly exercised discretion in allowing the application filed by the defendants. The Trial Court has adequately compensated the plaintiff for belatedly filing of the amendment application.

16. In "*Ram Niranjan Kajaria and Hiralal V/s Kalyamnal*" (*supra*), the Hon'ble Apex Court has held that the admission given in the written statement can be explained or clarified by way of amendment, but categorical admission given in pleadings cannot be permitted to be withdrawn by way of amendment.

In the case in hand, if the amendment is not allowed, serious prejudice is likely to be caused to the defendants, as they may be deprived of their share in the ancestral property.

17. In "*Rajkumar Gurawara*" (*supra*), the Hon'ble Apex Court has held that the amendment sought at the stage of arguments cannot be permitted. However, in the present case, the amendment is sought after the plaintiff closed his evidence. Therefore, this ruling would not assist the petitioner.

18. For the aforesaid reasons, this Court is not inclined to interfere in the discretion properly exercised by the Trial Court in favour of the defendants. No case is made out by the petitioner to warrant interference in the extraordinary writ jurisdiction. Writ petition, therefore, is dismissed. No costs. It is made clear that the observations made in this order shall not influence the Trial Judge while deciding the suit on merit.

19. At this stage, learned advocate for the petitioner states that the Trial Court's decision is stayed by this Court and requests to stay this order. Since the petitioner intends to challenge this order before the Hon'ble Supreme Court, this order is stayed for a period of six weeks from today.

[NITIN B. SURYAWANSHI]
JUDGE

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