

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11531 OF 2017
WITH CA/7143/2019 IN WP/11531/2017 WITH CA/1189/2022 IN
WP/11531/2017

SAVITABEN PRAVINCHANDRA PATEL
VERSUS
BHAGWANDAS JINABHAI PATEL AND OTHERS

Mr.A.S.Bajaj, Advocate for the petitioner.
Mr.S.P.Brahme, Advocate for respondent No.1.
Mr.A.A.Jagatkar, AGP for respondent/State.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 2, 2022

PER COURT :

1. At the outset, learned counsel Mr.Bajaj states that he needs permission of this Court to substitute certain documents in CA No.1189/2022, which have been erroneously placed on record and he may be permitted to place on record the correct documents. Permission is granted. The rectification is permitted to be carried out during the course of the day.

Civil Application No.7143/2019

2. By Civil Application No.7143/2019, the permission is sought to

bring the legal heirs of respondent No.1 on record by condoning a delay of 146 days in bringing them on record.

3. Heard the learned counsel Mr.Bajaj for the applicant and perused the application.

On perusal of the application, it is apparent that respondent No.1 died on 22/04/2018 and the death certificate is placed on record. It is stated that on account of his ill health, the contact could not be established with the lawyer and the application for bringing his legal heirs on record came to be filed on 14/12/2018, resultantly causing a delay of 146 days in taking out the application. On perusal of the application, it deserve to be allowed in terms of prayer clause "B" by condoning the delay of 146 days. The necessary amendment to be effected in the title cause forthwith.

WRIT PETITION NO.11531 OF 2017

4. The petitioner, is the original defendant No.2 in the suit instituted by respondent No.1 in the form of Special Civil Suit No.47/1996, seeking a declaration that the sale deed be declared as null and void and not binding upon the plaintiff and a further declaration about ownership of the suit plot, which was described in the plaint.

Permanent injunction was also sought against the defendants in the said suit.

5. The plaintiff, in the said suit also filed an application below Exh.6 for temporary injunction and an application for appointment of Court Commissioner was also moved. The notice was issued on the said application and the present petitioner i.e. defendant No.2 was served with a notice on 26/02/1996 and filed his say at Exh.6, which resulted in rejection of the application filed by the applicant vide Exh.6. These orders came to be assailed before this Court by filing a writ petition.

Since the High Court was pleased to call the record and proceedings in the pending suit, the proceedings were remitted to the concerned Trial Court somewhere in February, 2008 and the suit came to be transmitted to the learned Civil Judge, J.D. on 26/02/2008 in which the plaintiff appeared as late as on 14/03/2016. Since an objection was raised to the pecuniary jurisdiction, the suit was transmitted to the learned Civil Judge, Sr. Division, Jalgaon on 07/01/2017.

6. Notices came to be again issued to the defendants and

particularly the petitioner, who on receipt of the notice, appeared on 09/02/2017 before the learned Civil Judge, Sr. Division, Jalgaon and sought time to file written statement. He also made a request for being supplied with a copy of the amended plaint, which was received by him on 24/02/2017. On 15/06/2017, the petitioner (the defendant No.2) filed his written statement below Exh.162.

In the wake of the aforesaid written statement being filed at Exh.162, the submission advanced on behalf of the petitioner is that the impugned order passed on 19/06/2017, which direct the suit to proceed without written statement of defendant Nos. 1 and 2 is apparently erroneous since a written statement was already taken on record at Exh.162. In the wake of this important fact, the reasoning of the learned Joint Civil Judge, S.D. Jalgaon is sought to be deprecated and subjected to heavy criticism and the justification is offered to the effect that on the said date when the written statement was filed, the concerned Court was on leave and the matter was therefore placed before the Incharge Court, who accepted the written statement and exhibited it at Exh.162.

In the wake of the aforesaid dates not being disputed, the impugned order dated 19/06/2017 which record that the defendant

Nos. 1 and 2 have not filed their written statement on record and therefore directed the suit to proceed without written statement, cannot be sustained. This order must therefore yield its way to the written statement brought on record by the defendants and marked as Exh.162, which is prior to the date of passing of the order. In the wake of the aforesaid, the impugned order cannot be sustained and hence quashed and set aside.

7. It is pertinent to note that while issuing notice in the writ petition on 29/09/2017, this Court has directed the petitioner to deposit an amount of Rs.10,000/- before the Trial Court and the Trial Court was directed to adjourn the proceedings of the special civil suit. Accordingly, the costs has been deposited and has not been withdrawn, and the suit has not proceeded. Upon consideration of the prayer in the writ petition, I deem it expedient to direct payment of additional costs of Rs.10,000/- in favour of the plaintiff, which shall also be deposited in the Trial Court within a period of 4 (four) weeks. Entire costs shall be permitted to be withdrawn by the plaintiffs upon its deposit.

8. Since the Spl.C.S.No.47/1996 is pending from 1996 and has not been proceeded from 29/09/2017 in the wake of the order passed by this Court, the learned Civil Judge, Sr.Division is requested to expedite Spl.C.S.No.47/1996 and shall make every endeavour to conclude the same within a period of one year.

9. In the wake of the disposal of the writ petition and aforesaid directions, learned counsel Mr.Bajaj states that he is not pressing CA No.1189/2022. Civil application No.1189/2022 is disposed off, as such.

(BHARATI H. DANGRE, J.)