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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1259 OF 2022

SUGRIV DASU KALE

....PETITIONER

V/s.

UTTAM BHIMRAO KALE AND ORS

.....RESPONDENTS

Mr. Prasad P. Kulkarni Advocate for the Petitioner

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 16, 2022.

P.C.:

- 1) In R.C.S. No.239/2007 for partition and separate possession, Respondent-Defendant alongwith written statement preferred counterclaim. After the trial in the Suit has advanced, Application Exh. 224 was taken out for amendment of the same, on the issue of possession. Contradictory stand is permitted to be raised vide impugned order as such this petition by petitioner/ plaintiff.
- 2) The submissions are, apart from the fact that contradictory stands are taken by the Respondent in the counterclaim which is not

permissible in law, stage at which such amendment is sought and granted is also not permissible as there is absence of due diligence on the part of Respondent. He has relied on the Judgment of this Court in the matter of **M/s. Vaishnavi Sai Shri Mahalaxmi Jagdamba Shikshan Sanstha, Nagpur Vs. Purva Vidarbha Mahila Parishad**¹ particularly paragraph 14 so as to claim that inconsistent pleadings cannot be permitted to be brought on record by way of amendment.

3) I have appreciated said submissions.

4) Based on the claim for partition and separate possession moved by the Petitioner-Plaintiff, Exh. 30 preferred by the Respondent-Defendants which contains counterclaim. In view of rival pleadings, Trial Court was pleased to frame the issues at Exh. 52.

5) It is specific plea of Respondent-Defendants in the counterclaim that they are in settled possession of part of the Suit property as mentioned in para 13 from 25/03/1996. By way of amendment, they have sought to insert plea of adverse possession based on their settled possession over the Suit property.

6) Fact remains that it is not the case of the Petitioner-Plaintiff

¹ 2022 (1) ALL MR 343

that he is in possession of the Suit property particularly one which is in the possession of Defendant nos. 2 to 4 & 12. In that view, contention of the Petitioner that by way of amendment, contradictory or inconsistent pleas are permitted to be raised, cannot be accepted. As such, it cannot be said that by way of amendment, altogether a new case is sought to be incorporated by raising alternative or inconsistent pleas or the claim by way of amendment is wholly contradictory. Even it cannot be held that Respondents have tried to resile from the pleadings in the written statement.

7) Even the Judgment relied in the matter of **M/s. Vaishnavi Sai Shri Mahalaxmi Jagdamba Shikshan Sanstha, Nagpur** [cited supra] will be of hardly any assistance as in the said case, Plaintiff was permitted to amend his Plaint thereby incorporating inconsistent pleas. It is settled position of law that Defendant in defence can raise contradictory stands.

8) In that view of the matter, no case for interference is made out. Petition stands dismissed.

[NITIN W. SAMBRE, J.]