

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION 1715 OF 2022**

Sou. Nalini Charudatta Bhalerao ... Petitioner.

Versus

Shri Vasant Shankar Kunte & Ors. ... Respondents.

Mr. Jaydeep S. Deo, Advocate a/w. Mr. Gunjekar for the
Petitioner.

Mr. A. M. Kulkarni, Advocate a/w. Gaurav Sharma for
Respondents.

CORAM : ROHIT B. DEO, J.

DATE : JULY 12, 2022

P.C. :-

1. The grievance of the original Plaintiff in Special Civil Suit 160 of 2011 is that after commencement of the trial, the Defendant 2 is permitted to amend the written statement without satisfying the test of 'due diligence'.

2. The suit is for partition. Plaintiff Mrs. Nalini Bhalerao is daughter of the deceased Mr. Shankar S. Kunte. Defendants are the son and grand children of Mr. Shankar Kunte.

3. While Defendant 2 was under cross-examination, he was put certain questions regarding compromise decree in Special Civil Suit 266 of 1993. This suit was instituted by the Defendant 2-Abhijeet, his brother and by their mother. The original Defendants were the father and grand-father of minor children namely Abhijeet and Amit.

4. According to the Defendant 2, he was not aware of the compromise decree in special civil suit 266 of 2013 and it was only after certain questions were put to him in the cross-examination, he became aware of the earlier litigation and thereafter, he collected the necessary information. On such premise, the Defendant 2 sought amendment of the written statement. The proposed amendment is restricted to bringing on record paragraph 6.3-A which merely refers to the earlier adjudication and then incorporates the interpretation or inference of the Defendant 2 on the basis of the consent decree. The learned trial Judge has allowed the Defendant 2 to carry out the amendment.

5. The learned counsel for the Plaintiff would submit that the test of due diligence is not satisfied. It is true that the proviso

to Order 6 Rule 17 of the Code of Civil Procedure, 1908 is triggered. However, the learned trial court has found that the Defendant 2 was not aware of the earlier adjudication before the commencement of the trial.

6. The learned counsel for the Plaintiff would then submit that if it is assumed that the Defendant 2 became aware of the earlier consent decree in 2016 when he was cross-examined, the application is unduly belated. While the learned counsel for the Plaintiff is right in submitting that there is no satisfactory explanation for not preferring the application under Order 6 Rule 17 immediately after becoming aware of the earlier litigation, the Plaintiff is compensated by direction to pay costs. That apart, in the interest of complete and effective adjudication, the averments pertaining to the earlier litigation to which deceased Mr. Shankar Kunte was a party, would be extremely relevant.

7. On a holistic view of the matter, I am not inclined to interfere in writ jurisdiction.

8. The suit is pending since 2012. The grievance of the

Petitioner-Plaintiff is that Defendants are interested in delaying the adjudication.

9. Considering the apprehension expressed, the learned trial Court is requested to dispose of the suit finally within next 12 months. No adjournment shall be granted unless just and exceptional case is made out.

10. The Petition is disposed of in the aforesaid terms.

11. Needless to observe that every contention, touching the merits of the amendment, is kept expressly open.

(ROHIT B. DEO, J.)

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