

(904)-WP-2776-20 (corrected).doc.

Corrected as per speaking to minutes of the order dated 30th March, 2022.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2776 OF 2020

Naushad Bobade

..Petitioner

Versus

Dhanvanti Sunil Bamne

(Kumari Dhanvanti Laxman Satpute) and Ors.

..Respondents

Mr. P. V. Nichani a/w Vikas Kumbhar i/by M/s. P. V. Nichani & Co., for the Petitioner.

Mr. Omkar Nagwekar, for Respondent Nos.1 to 3.

Ms. Prabha Badadare a/w Omkar Nagwekar, for Respondent Nos.5, 6, 7, 9 & 10.

CORAM : NITIN W. SAMBRE, J.

DATE : 23rd MARCH, 2022

PC.

1. Leave to amend the cause-title i.e. to correct the name of respondent No.1.

2. Amendment to be carried out forthwith.

3. Present petition is directed against the order passed below Exh.195 in RCS No.1708 of 2012 which is for partition. The petitioner's/defendant No.9's cross-examination has commenced in 2016 and till 2022, same is not concluded. That being so, the Court below while allowing amendment of written statement having been sensitive to the position of law and considering the repeated failure of petitioner in completing trial by concluding cross-examination, vide impugned order has permitted amendment to the written statement. However, in view of above default has not permitted to go ahead with the cross-examination. As such, this petition.

BGP

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4. Considered rival submissions.

5. It can be inferred from the record that since 2016 till this date, petitioner/defendant No.9 has not cooperated with the Court below in concluding the cross-examination. Rather the petitioner/ defendant No.9 took out application Exh.195 for amendment of written statement when his cross-examination was in progress which was duly allowed vide impugned order by the Court below. In spite of above petitioner has not cooperated with the Court below. The suit is pending since last more than ten years. In the aforesaid background, in response to the Court's query, counsel for the petitioner volunteers that he shall deposit Rs.1,00,000/- (Rs. One Lakh only) in the Court below within a period of two weeks from today. If such cost is deposited within two weeks, Court below shall pass consequential order of permitting the petitioner to complete cross-examination without any further adjournments. Undertaking given by the petitioner to that effect is accepted.

6. If the cost is not deposited, it shall be open for the Trial Court to proceed with the hearing of the suit on its own merits without there being cross-examination.

7. Once the cost is deposited, the Trial Court shall pass order of apportionment of the same.

8. The petition as such stands disposed of in above terms.

[NITIN W. SAMBRE, J.]