

V/s.

Bhaurao Krishnaji Bhosale (since ... Respondents
Deceased), through Lrs.-Suman Bhaurao
Bhosale and Ors.

Mr. S.S. Patwardhan for the petitioner.

Mr. Krupanshu Nardu a/w. Mr. Bharat Ghodvi i/by Miss Shama Mulla and Mr. Sachin Bhosale for the respondents.

CORAM : VALMIKI SA MENEZES, J.

DATED : DECEMBER 22, 2022.

P.C. :

. Rule. Rule made returnable forthwith. By consent of the parties the petition is heard finally.

2. This Writ Petition impugns the judgment and order dated 1st February 2013 passed by the learned District Judge No. 11 at Pune allowing the respondents'/original appellants' application below Exhibit-37 in Civil Appeal No. 214 of 2000, for amendment of the plaint in Regular Civil Suit No. 1972 of 1991.

3. Regular Civil Suit No. 1972 of 1991 was filed by the original defendant no.1-Prabhakar Krishnaji Bhosale for a declaration

that he was absolute owner of the suit property described in Paragraph 1 of the plaint and for permanent injunction against the Defendant No. 2-Society from transferring the shares standing in the name of Defendant no.1 to a third party. In reply to the plaint in the suit, the Defendant No.1 herein filed his written statement on 27th February 1992 contending therein that he did not reside in India permanently and planned to return to India to reside in the suit Bungalow. It is his case that since he was not in India, he executed General Power of Attorney dated 8th July 1991 in favour of Sulochanabai Bapurao Bhosale to act as an agent for verifying the written statement and to pursue her defence in the said suit.

4. Evidence was led by the parties in the suit and the said Power of Attorney was produced by the Attorney of the original Defendant No.1, who stepped into the witness box to depose on behalf of the Defendant No. 1. This Power of Attorney was exhibited in evidence as Exhibit-150. The said witness/attorney was cross-examined, including cross-examination upon the contents of the Power of Attorney, which is evident from the references to the same in the judgment of the Civil Judge, Junior Division, Pune passed in Regular Civil Suit No. 1972 of 1991. The suit was dismissed and the plaintiff carried an appeal before the District Court, Pune being Regular Civil Appeal No. 214 of 2000. It is during the pendency of the appeal that the original plaintiff moved an application at Exhibit-37 on the file of the District Court, Pune seeking amendment, under Order VI Rule 17 of Civil Procedure Code, to the plaint in Regular Civil Suit No. 1972 of 1991.

5. The amendment sought to the plaint is in the nature of incorporating pleadings to challenge the General Power of Attorney dated 8th July 1991, which was exhibited in evidence at Exhibit-150 by the Trial Court, a copy of which has been furnished to the original plaintiff at the time of cross-examination. By this amendment, the plaintiff sought to claim that the Power of Attorney is fraudulent and fabricated for the reasons that it could not have been executed in India at Mumbai on 8th July 1991, and further that the Stamp paper on which it was engrossed was of 21st June 1991. The amendment further contends that attestation of the Power of Attorney was executed in the U.S.A on 8th July 1991 and on the face of it, it would be highly impossible for the executor to execute it at two places i.e. in U.S.A. and in Mumbai at the same time.

6. The reasons cited in the application seeking amendment at the appellate stage on 7th December 2011 would evidence that the parties had concluded evidence much prior to the year 2000. It is stated in Paragraphs 3 and 4 of the application that during the pendency of the appeal, the plaintiff went through Power of Attorney and realised that the fraud alleged to have been committed by the original Defendant No.1 while executing the Power of Attorney and it is for that reason that the plaintiff moved an amendment by an application dated 7th December 2011.

It is further the petitioner's case that the Appellate Court has cited no reasons for amending the plaint; it is further his case that there are no facts pleaded in the application that would allow the

Appellate Court to proceed with the hearing of the application, i.e. to say, there is no pleading in the application, as is required under the provisions of Order VI Rule 17 of the CPC, as it stood prior to the amendment of 2002, to show due diligence on the part of the original-plaintiff in moving the application. The respondents have supported to impugned order submitting it is well reasoned and does not call for any interference.

7. I have heard learned counsel for the parties. Perused the record of the petition and the copy of the Power of Attorney, which was marked in evidence by the Civil Court, Pune as Exhibit-150.

8. It is clear from the record that the same Power of Attorney was produced along with written statement of the defendant way back on 27th February 1992 as a supporting document. Thereafter, evidence was led by the plaintiff, who had ample opportunity to deal with the Power of Attorney produced on record and to lead the evidence to challenge the Power of Attorney and raise all objections to the same, as to its execution, stamping or the fact that on the face of the document, its execution itself was in doubt. From the record it appears that the plaintiff has not led any such evidence.

Thereafter, the very same attorney, Soluchnabai, in whose favour the Power of Attorney was executed, has stepped into the witness box as an agent of the original Defendant No.1 and has led evidence on behalf of the Defendant No.1. She was cross-examined by the plaintiff. On perusal of the judgment dated 19th January 2000 passed by the Civil Judge, Junior Division, Pune in the suit, it clearly

reveals that though the Power of Attorney was produced, there does not appear to be much cross-examination on the same. No serious reference was also made in the arguments of the plaintiff or challenge sought to be raised to the Power of Attorney by way of amendment. This being the case, it appears that now having realised that there was no effective cross-examination on the issues raised in the amendment sought before the Appellate Court, the plaintiff now seeks to amend the plaint to incorporate these amendments, pursuant to which, obviously, the plaintiff would ask for recall of the said attorney of Defendant No.1.

On enquiries made with the Advocate for the parties, it now transpires that the said attorney in whose favour the Power of Attorney was executed has since passed away and would not be available for cross-examination.

9. In my opinion, the plaintiff has not pleaded any of the jurisdictional facts, which are required for exercise of the jurisdiction under order VI Rule 17 of the CPC, in favour of the plaintiff even as it stood prior to the amendment to the Civil Procedure Code. The plaintiff was required to state with a fair degree of the detail the reasons as to why, despite exercise of due diligence, the amendments could not be brought on record at the stage of completion of the pleadings or at least at the stage of the evidence. The only reason cited in the application is to be found at Paragraph 5 thereof, which states that the plaintiff has now realised that the Power of Attorney is fraudulent and this realisation is from the reading of the Power of

Attorney itself, which is not from any other source. In that view of the matter, there are no other reasons in the amendment application, on the basis of which the Appellate Court could exercise jurisdiction in favour of the plaintiff to allow such amendment. Such an amendment would also give rise to multiplicity of proceedings, as allowing the amendment of the plaint would cause huge delay in disposal of the appeal as further evidence will have to be recorded by the parties. This would cause serious prejudice to the Defendants.

10. From perusal of the order of the Appellate Court, it is clear that there are no reasons at all cited for grant of amendment. The only reason cited by the Appellate Court is that since the Power of Attorney related to the dispute in the Suit; such reason is alien to the jurisdiction to be exercised under the provisions of Order VI Rule 17 of Civil Procedure Code.

11. For the reasons cited above, I find that the impugned order dated 1st February 2013 passed by the learned District Judge-11 at Pune in application below Exhibit-37 in Civil Appeal No.214 of 2000, is unsustainable as the Appellate Court has not exercised jurisdiction within Order VI Rule 17 of the CPC. From the face of the pleadings of the plaintiff, in Paragraph 5 of the application for amendment, the impugned order is also unsustainable since it has not cited any reasons for grant of the application.

12. In these circumstances, this would be a fit case to exercise supervisory jurisdiction under Article 227 of the Constitution of India to quash and set aside the impugned order dated 1st February 2013 of

the District Court, Pune.

Accordingly, the impugned order dated 1st February 2013 of the District Judge, Pune is quashed and set aside and the application for amendment of the original plaintiff - Bhaurao Krishnaji Bhosale, at Exhibit-37 in Civil Appeal No. 214 of 2000, is dismissed.

13. Rule is made absolute in terms of prayer clauses (a) and (b) of the petition.

14. Needless to state that notwithstanding this order, the respondent no.1-original appellant is at liberty to argue the points raised in the proposed amendment at the stage of final arguments of the appeal, if permissible at law.

15. The order granting stay of the proceedings before the District Court stands vacated.

16. Parties to appear before the District Court, Pune on 9th January 2023 at 10.30 a.m. Learned District Court is requested to dispose of Civil Appeal No. 214 of 2000 preferably within a period of four months from the date of receipt of this judgment.

17. Registry to inform the learned District Court No.11, Pune in Civil Appeal No. 214 of 2000 of this order via e-mail.

(VALMIKI SA MENEZES, J)