

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3778 OF 2010
WITH
INTERIM APPLICATION NO.2921 OF 2022

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Gorakh Narayan Talekar ..Petitioner

Versus

Gokul Panda Talekar

Since deceased through legal heirs and Ors. ..Respondents

Mr. Surel S. Shah a/w Rahul Kasbekar, Petitioner.

Mr. Ashok R. Metkari, for the Respondent Nos.1(a) to 1(d).

CORAM : NITIN W. SAMBRE, J.

DATE : 4th MAY, 2022

PC.

1. Rule. The petition is heard finally by consent of parties.
2. This petition is by the defendant to Regular Civil Suit No.205 of 1995 wherein the respondent/plaintiff has sought declaration of ownership based on the registered Adoption-Deed dated 28th August, 1978 and also sought relief of possession of the suit property.
3. After trial has reached at an advanced stage, respondent/plaintiff took out an application for amendment of plaint so as to incorporate a foundation so as to lead secondary evidence in the matter of lost of the original registered Adoption-

Deed. The said prayer is allowed vide order impugned. As such, this petition.

4. The submissions of Mr. Surel Shah, counsel appearing for the petitioner/defendant are, once the suit has reached at an advanced stage, as respondent/plaintiff has failed to demonstrate due diligence and in the absence of earlier foundation as regards lost of original Adoption-Deed, the prayer for amendment ought not to have been granted.

5. He would further urge that the Court below while passing order impugned dated 18th March, 2010 was not sensitive to the very principle to be adopted while dealing with prayer for amendment, particularly, having regard to the very scheme of Chapter V i.e. Section 65 of the Evidence Act. Drawing support from the judgment of the Apex Court in the matter of ***Jagmail Singh and Anr. Vs. Karamjit Singh and Ors.*** reported in ***(2020) 5 SCC 178***, he would urge that the Court below erred in granting amendment contrary to the scheme of Section 65 of the Evidence Act.

6. Counsel for the respondent supports the order impugned.

7. The fact remains that the suit in question being RCS No.205 of 1995 is pending adjudication pre-amendment to the CPC.

8. In the aforesaid background, principle of due diligence, in my opinion, cannot be applied to the facts of the case in hand

qua the order impugned. The fact that there exist a registered Adoption-Deed is specifically pleaded and as such, by taking out application for amendment of plaint to the extent that original was lost in a fire and certified copy is permitted to be produced on record for permission to lead secondary evidence is required to be appreciated once the respondent/plaintiff is already permitted to lead secondary evidence. The fact remains that such foundation is rightly said to be permitted to be led by amendment by passing amendment by the Trial Court. In this background, it cannot be said that the issue is covered by the judgment of the Apex Court in the matter of *Jagmail Singh (supra)*. As such, no case for interference in the extraordinary jurisdiction of this Court is made out.

9. The petition as such stands dismissed.
10. Pending interim application also stands disposed of.
11. Since the suit has remained stayed for almost twenty five years, hearing of the same is expedited.
12. It is directed hearing of the suit be concluded within a period of six months from today.
13. Amendment to be carried out forthwith.

[NITIN W. SAMBRE, J.]