

S.S.Kilaje

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9368 OF 2022**

Arvind Jeram Kotecha	.. Petitioner
Versus	
Prabhudas Damodar Kotecha	.. Respondent

- Mr. Anoshak Daver i/by Mr. Sanket Mungale for Petitioner
- Advocate Farhan Dubash a/w. B.N.Jadhav i/by Rustamji & Ginwala for Respondent

CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 30, 2022.

P.C.:

1. Heard Mr. Daver, learned Advocate for Petitioner and Mr. Dubash, learned Advocate for Respondent.
2. This matter was argued yesterday and kept for further submissions today.
3. Perused the impugned Order dated 25.07.2022.
4. Petition has been filed for challenging the Order of the Trial Court dated 25.07.2022 passed in Notice of Motion No. 504 of 2021 taken out by the Defendant (Petitioner herein) for seeking permission to lead additional evidence by way of filing additional affidavit on two grounds. Paragraph No. 6 and 7 gives the details of the two issues / grounds as well as findings returned by the Trial Court. Paragraph Nos. 6 and 7 are reproduced below for reference:-

“6. I have read the case laws cited supra. From the cumulative reading of case laws cited supra it is settled position of law that Court can permit the party to the suit to lead additional evidence at any stage of the suit, provided that it is essential to decide the controversy between the parties. It is settled that once it is found that the additional evidence

have bearing on the matter at issue than that evidence can not be rejected on the ground of delay. In this backdrop, it is necessary to find out whether events point out by the defendant and additional documentary evidence sought to be produced has any bearing on the issue in the present suit.

7. Plaintiff's suit is for relief of declaration that the deceased Jeram i.e., father of defendant and thereafter the defendant is holding 12.5% share in the firm M/s. Mavinkere Estate held in trust for and on behalf of the plaintiff. The plaintiff is also seeking decree for payment of amount and for possession of assets of his share. The proposed events sought to be brought on record are in respect of execution of power of attorney and formation of partnership firm by plaintiff with the family. It has come on record that one of the event as regards formation of partnership firm by the plaintiff is challenged by the defendant by way of independent suit. Defendant has no intention to challenge the power of attorney executed by the plaintiff in favour of his son. Defendant also could not point out the effect of power of attorney on his right. The events sought to be brought on record has no bearing on the decision of the present suit. Documentary evidence sought to be produced are not relevant for decision of suit. In the above backdrop case laws cited supra on behalf of defendant will not help the defendant. Defendant has failed to make out ground to permit him to lead additional evidence as prayed. In the result following order is passed.

ORDER

1. Notice of Motion no. 504/2021 stands rejected.
2. No order as to costs."

5. At the outset Mr. Daver fairly submitted that in so far as the issue of Power of Attorney is concerned, he would not press the same.

6. However, the issue relating to formation of the partnership firm and its shareholding pattern needed to be brought on record as it is relevant for the purpose of the subject suit. However, the impugned order records that the Defendant has already filed a substantive independent suit in respect of the challenge to the formation of the firm, the partnership agreement and its shareholding pattern and the Trial Court therefore has rejected the request sought by the Respondent. This Court has put to the Petitioner that if he was willing to withdraw the independent suit regarding the challenge, Petitioner

would then be allowed to raise the said issue before the Trial Court. However after taking instructions Defendant has sought an order from the Court.

7. Petitioner cannot be entitled to have multiple proceedings in respect of the same cause of action between the same parties. That apart, the learned Trial Court has come to the conclusion that the additional documentary evidence sought to be produced is not relevant for decision of the suit. The order passed by the Trial Court, impugned herein, has been correctly passed. The reasons given in paragraph No.7 of the order are upheld. The order is sustained.

8. In view of the above, Writ Petition is dismissed.

9. However, it is clarified that if the Petitioner desires to prefer any application for seeking to rely upon the papers and proceedings / certified copy of the independent suit filed by him in respect of formation of the partnership firm and its shareholding pattern, he is permitted to take out an appropriate application before the Trial Court, if permissible, and strictly in accordance with law which shall be dealt with on its merits by the Trial Court without being influenced by this order.

[MILIND N. JADHAV, J.]

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