

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11805 OF 2018

Govind Narhari Dangare & Ors.

.. Petitioners

Versus

~~Balkrishna Ramchandra Dangare~~

(since deceased) through Legal Heirs

Pralhad Balkrishna Dangare & Ors.

.. Respondents

-
- Mr. Rushikesh G. Patil for Petitioners
 - Mr. Yogesh P. Morbale for Respondent Nos. 2, 4 and 5
-

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 15, 2022

P.C.:

1. Heard Mr. Patil, learned Advocate for Petitioners and Mr. Morbale, learned Advocate for Respondent Nos.2, 4 and 5.

2. By the present Writ Petition, the Petitioners has impugned the order dated 11.06.2018 passed by the learned Appellate Court in Regular Civil Appeal No.53 of 2014 allowing the Applications filed below Exhibits-11 and 15 in the said Appeal. Application below Exhibit-11 was filed for production of documents under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (for short “CPC”) whereas Application below Exhibit-15 was filed for seeking an amendment of the pleadings under Order VI Rule 17 of CPC.

3. Briefly stated the facts are as under: -

3.1. Petitioners filed suit bearing Regular Civil Suit No.63 of

2000 seeking partition of suit property on the ground that their father Narhari Dangare and his brother Balkrishna Ramchandra Dangare were in the joint business of Mandap decoration and had held the suit property together as joint property. Petitioners being Plaintiffs before the learned Trial Court submitted that they had $\frac{1}{2}$ share in the suit property. The case of the Respondents (Defendants) before the learned Trial Court was that the suit property was self-acquired property of Balkrishna Ramchandra Dangare and hence Petitioner would not be entitled to any share therein.

3.2. That apart, it was contended by Defendants that if it was the case of Plaintiffs that the suit property was ancestral property, then in that case the suit that was filed was bad for non-joinder of the other brothers of Narhari and Balkrishna who would otherwise under the Hindu Law of Succession be entitled to an equally proportionate share in the ancestral property.

3.3. Plaintiffs did not implead the other brothers admittedly. The suit was dismissed by the learned Trial Court on 25.03.2004. It was contended by the Plaintiffs that it was much later after the original suit was dismissed that they came across a document of arrangement between Narhari and Balkrishna which stated that the suit property was joint property and therefore on that ground the Plaintiffs filed the Appeal after 10 years and the Application below Exhibit-15 for seeking

amendment after 14 years before the Appellate Court.

3.4. Defendants resisted the claim of the Plaintiffs before the learned Appellate Court on the ground of gross delay namely firstly filing appeal after 10 years after the dismissal of suit by the learned Trial Court and thereafter filing the Application seeking amendment after another 4 years. It was contended that the proceedings were filed with an ulterior motive, only to delay the execution of the decree which was passed in favour of the Defendants.

3.5. Perusal of the impugned order shows that the learned Appellate Court has carefully perused and gone through the alleged document which is now sought to be relied upon and produced by the Petitioners and which is alleged to have been executed between Narhari and Balkrishna which would go to suggest that the suit property was joint property.

4. The learned Appellate Court after reading the document has concluded that the said document if read as a whole clearly suggested that Narhari and Balkrishna were allowed to reside in one room of the suit property only till their house was constructed on the plot of land which was given to Narhari as his share.

5. In that view of the matter, claim of the Plaintiffs that he would be entitled to claim joint ownership of the suit property has to fail comprehensively. The learned Appellate Court has returned a

categorical finding that the said document when perused carefully, it revealed that the suit property was given to Narhari and Balkrishna only on temporary basis and they were allowed to reside in one of the room therein. Assuming for the sake of argument that the said document evidence in favour of the Plaintiffs, reading of the same does not support their case. The learned Appellate Court has stated that if the claim of the Plaintiffs is to the extent of $\frac{1}{2}$ share in the suit property, the same is not borne out by the said document at all. Hence, pleading of the Plaintiffs and contents of the document are infact contradictory to one another. The learned Appellate Court has therefore correctly recorded the finding that the said document if allowed to be placed in the pleadings at this stage would lead to an anomalous situation and Petitioners would thereafter definitely seek specific performance of the said document and this would change the nature of the suit completely which was decreed more than 10 years ago. That apart, the question of delay of 10 years after the decree is passed and execution is in progress also needs attention.

6. Hence, I am in complete agreement with the findings returned by the learned Appellate Court in paragraph No.8 of its order which is impugned in the present Petition and agree that it has taken a correct view. For convenience, paragraph No. 8 of the impugned order is reproduced below: -

“8. I have carefully gone through the document placed on record with list Exh. 12 in the appeal. It appears that the document was executed on 22.04.1968 between Narhari and Balkrishna admitting that the suit property is their joint property however by the said document they made arrangement to partition the five properties jointly owned by them. According to the said document, the suit property gone to the share of Balkrishna and Narhari was only allowed to reside in one room of the suit property till house will be constructed on the plot of land given to the share of Narhari. If the document is to be read in evidence then it needs to be read as a whole and not part of it by which document of arrangement was made between Narhari and Balkrishna to partition five properties and the suit property has been given to the share of Balkrishna. It was also agreed between them that Balkrishna will construct a house at his own cost on the plot of land given to the share of Narhari and till then permitted him to reside in a single room of the suit property. The other movable property was also partitioned and distributed between them. Both Narhari and Balkrishna are now no more. Their heirs and legal representatives are fighting the litigations. If this document executed in the year 1968 is carefully read, it reveals that the suit property was given to the share of Balkrishna and Narhari was temporarily allowed to reside in one of the rooms of the suit property. But in the suit against the decree of which this appeal this appeal is preferred, plaintiffs/appellants have claimed half share in the suit property claiming that suit property is the joint property purchased out of the earnings from the joint business of Narhari and Balkrishna. Thus, the pleading in the suit and contents of the document are contradictory to one another. If this document is permitted to be admitted in evidence then it will definitely change the nature of the suit. In so far as by relying on this document the appellants would seek specific performance of this document. Pleading which would change the nature of the suit cannot be allowed to be incorporated by way of amendment under Order 6 Rule 17 of the Code of Civil Procedure. So also in the absence of pleadings the document cannot be admitted in evidence. For all these reasons I am of the considered view that both the applications are devoid of merits and liable to be rejected. Hence the following order :

ORDER

- (1) Both applications Exh. 11 and Exh. 15 are hereby rejected.*
- (2) No order as to costs.”*

7. It is further seen that pleadings in the original suit Plaintiff which was dismissed by the learned Trial Court and the contents of the

alleged document are completely contradictory to one another. In that view of the matter, in the event if the said document is allowed to be now taken on record, the entire nature of the suit which has been dismissed after a comprehensive trial would change. The learned Trial Court has referred to the provisions of Order 41 Rule 27 of the CPC and submitted that parties to an Appeal are entitled to produce additional evidence, whether oral or documentary, if the learned Appellate Court requires any document to be produced to enable it to pronounce its judgment or for any other substantial cause or if a party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence was produced by him at the time when the decree appealed against was passed.

8. In the present case, it is to be noted that the original suit was dismissed on 25.03.2004. Ten years thereafter the Appellant approached the Appellate Court in 2014 and filed the Appeal. Further after a period of four years thereafter, the impugned Applications under Exhibit-11 and Exhibit-15 were filed. It is seen that the Petitioners' case in both the aforesaid Applications do not come within the ambit of the provisions of Order XLI Rule 27 of the CPC. That apart, the reasons given by the learned Appellate Court as alluded to

herein above are cogent and hence the impugned order does not call for any interference whatsoever. The order dated 11.06.2018 passed by the learned Appellate Court is sustained. The Writ Petition therefore fails.

9. At the request of both the learned Advocates, the learned Appellate Court is requested to dispose of the pending Appeal within a period of six months from today.

10. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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