

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10354 OF 2014

Kamla Shriniwas Khatod

.. Petitioner

Versus

Shobha Premchand Mantri and others .. Respondents

Shri Anil S. Bajaj, Advocate for the Petitioner.

Shri Mangesh R. Jadhav, Advocate h/f Shri a. B. Gaikwad,
Advocate for the Respondent No. 1.

Shri Kunal A. Kale, Advocate for Respondent Nos. 2 to 5.

Shri Ajit D. Kasliwal, Advocate for the Respondent No. 6.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 21ST FEBRUARY, 2023.

FINAL ORDER :

. By this petition, challenge is to the order dated 01st July, 2014 passed by the Trial Court permitting the respondent No. 1/original defendant No.1 to amend the written statement. Special Civil Suit NO 296 of 2012 was instituted by the petitioner/plaintiff seeking declaration that the sale deed dated 07th September, 2012 executed by the Respondent Nos. 2 to 5 - original Defendant Nos 2 to 5 in favour of the Respondent No 6-original Defendant No 6 is illegal, null and void and for perpetual injunction restraining the Respondents from causing any obstruction and interference in the possession of the Petitioner over the suit land. For sake of convenience the parties are referred by their status in the Trial Court.

2. It is case of the plaintiff that the suit property i. e. land gut No. 24, which was totally admeasuring 7H 50R was owned by

one deceased Kazi Gaus Mohiyoddin Kazi Waziroddin and part of the said land to the extent of 16 Acres 20 Guntha was leased to the plaintiff and defendant No. 1 under the registered lease deed dated 29th April, 1993 for a period of 99 years. As per the above lease deed/thoka patra names of the plaintiff and the defendant No. 1 came to be mutated and thereafter due to strained relationship between the plaintiff and the defendant No. 1, the plaintiff and the defendant No. 1 started cultivation of their respective one half portion of the lease land. Subsequently, in the year 2009, the defendant No. 1 purchased 08 Acres 10 Guntha portion. It is specific case of the plaintiff that the plaintiff remained in possession of her portion of the suit land admeasuring 08 Acres 10 Guntha as lessee on the basis of lease deed dated 29.04.1993, which position continued as a lessee. The plaintiff's cause of action for filing special civil suit is that the defendant No. 6 in the year 2012 approached the suit land and caused obstruction, by reason of a sale deed dated 07th September, 2012 alleged to have been executed by the defendant Nos. 2 to 5, who are legal heirs of the original owner.

3. The defendant No. 1 adopted as written statement, the reply which was filed to the application for temporary injunction was adopted as written statement by the defendant No. 1. The written statement of the defendant No. 1 substantially admitted the contents of the plaint. In particular it was admitted that as per the lease deed names of the plaintiff and the defendant No. 1 came to be mutated. It was also admitted that the plaintiff started cultivating her portion of land adm. 08 Acres 10 Guntha. Subsequently by the proposed amendment the defendant No. 1 is seeking to withdraw the admissions made in the written

statement and by the proposed amendment sought to put up a case that the lease deed dated 29th April, 1993 is mutually cancelled and surrendered by the defendant No. 1 and plaintiff in favour of the father of the defendant Nos. 2 to 5 and also possession was handed over to the father of defendant Nos. 2 to 5. Whereas by the written statement, the contents of plaint were admitted to be true and correct, by the proposed amendment, the contents of the paragraph Nos. 4 to 12 were sought to be pleaded as incorrect and denied.

4. Learned counsel appearing for the petitioner submits that, by the amended written statement, the defendant No. 1 is seeking to withdraw the admissions which were given in her favour. He has taken this Court through the pleadings in the plaint, earlier written statement and the proposed amendment and would submit that it is clear that at the instance of the defendant No. 6, the amendments are sought to be brought on record in the written statement so as to give a go by to the earlier admissions.

5. *Per contra* learned counsel for respondent No. 1 submits that the effect of amendment is not to withdraw the admissions but to explain the pleadings and clarify the stand which has been taken in the written statement.

6. Considered the rival submissions of the learned counsel for parties.

7. At this stage, it would be necessary to refer to the provisions of Order VIII Rule 3 and 5 of the Code of Civil

Procedure, which is reproduced hereinbelow.

CODE OF CIVIL PROCEDURE, 1908

ORDER I

ORDER II

ORDER VIII

[1.Written Statement.—

2. New facts must be specially pleaded.—

3. Denial to be specific.— It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

5. (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against the person under disability. Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

8. It is clear from the provisions of the Code that each and every averment of the plaint has to be dealt with specifically and denial is required to be specific. The denial must be specific of each fact of which he does not admit the truth, except damages. Rule 5 of Order VIII of the Code makes it clear that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability. It is clear from the provisions of the Code that unless there is specific denial of every allegation of fact, it is implied to have been admitted. Considering the provisions of the Code, submission of the learned counsel for the defendant No. 1 that there is no withdrawal of

admission cannot be sustained. In the earlier written statement there is no denial and in the paragraph contents of the plaint have been admitted to be true and correct. It is also required to be noted that in the impugned order the Trial Court has ignored the provisions of law and has permitted the defendant No. 1 to withdraw the admissions by way of proposed amendment, which cannot be sustained.

9. Learned counsel for the defendant No. 6 has attempted to support the case of the defendant No. 1. However, I am not inclined to expand the scope of the petition, which is restricted to the examination of the impugned order dated 01st July, 2014.

10. Considering that the proposed amendment seeks to withdraw the admissions given in the earlier written statement, the impugned order dated 01st July, 2014 is not legally sustainable and is liable to be quashed and set aside. In the result the petition succeeds. Writ petition stands allowed. No costs.

11. Needless to clarify that the proceedings are in respect of portion of the property which is occupied by the plaintiff as lessee i. e. 08 Acres 10 Guntha and no relief is sought as against the defendant No. 1.

[SHARMILA U. DESHMUKH, J.]