

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3397 OF 2021
WITH
WRIT PETITION NO. 13115 OF 2022

Daulat Bhagwant Dinde .. Petitioner
Versus
Namdeo Bhagwant Dinde .. Respondent

-
- Mr. Pradeep Thorat a/w. Ms. Aditi S. Naikare, Advocate for Petitioner.
 - Mr. Jayendra D. Khairnar, Advocate for Respondent.
-

CORAM : MILIND N. JADHAV, J.
DATE : FEBRUARY 22, 2023.

P.C.:

1. Heard Mr. Thorat, learned Advocate for Petitioner and Mr. Khairnar, learned Advocate for Respondent for some time.

2. On 17.01.2023, this Court passed the following order:-

"1. Heard Mr. Thorat, learned Advocate for Petitioner and Mr. Khairnar, learned Advocate for Respondent for sometime.

2. Admittedly, exception in the present Writ Petition has been taken to the order passed by the learned Trial Court rejecting the Application seeking amendment of the written statement. Dispute between the parties is narrow and restricted to the description of the suit property.

3. Mr. Thorat, would submit that Petitioner / Defendant in his original written submission has stated that in the normal course the averments given in paragraph No.1 of the plaint are admitted.

4. Mr. Khairnar, learned Advocate for Respondent would submit that this admission is now sought to be withdrawn by the Petitioner / Defendant by giving an explanation in respect of boundaries of the suit property which according to him were never determined in partition.

5. Be that as it may, submissions of parties would otherwise revolve around disputed questions of fact and most importantly both parties should be given an adequate opportunity to prove their respective case in respect of the suit property and or description of the suit property by leading evidence and keeping all contentions of the parties expressly open including the objection raised by the Respondent herein to be determined by the Trial Court after allowing parties to lead evidence on the issue of description of suit property.

6. Considering that parties are yet to lead evidence it is impressed upon both the learned Advocates to proceed before the learned Trial Court within a time bound programme for disposal of the suit.

7. Advocates are directed to take instructions from their respective clients and inform the Court accordingly on the next date.

8. It is made clear that this Writ Petition will be disposed of on the next date.

9. Stand over to 24th February, 2023.”

WRIT PETITION NO.3397 OF 2021

3. Considering that the suit being Regular Civil Suit No.28 of 2019 is pending in the record and file of the learned Civil Court, without opining and returning any finding on the observations made by the learned Trial Court at Exhibit-5 Application as well as also by the learned Trial Court in respect of the said Exhibit-5 order, by consent of the learned Advocates, the pending suit before the learned Trial Court namely Regular Civil Suit No.28 of 2019 is directed to be expedited and the same shall be disposed of within a period of 12 weeks from today.

4. The learned Trial Court is directed not to grant unnecessary adjournment to the parties unless absolutely necessary.

5. With the above directions, Writ Petition No.3397 of 2021 is disposed.

WRIT PETITION NO.13115 OF 2022

6. The challenge is to the order rejecting amendment application filed by the Petitioner (Defendant therein). The amendment is to the effect that nomenclature of the suit property is not sought to be changed, but boundaries of the suit property as described in the plaint are required to be corrected.

7. It is seen that, even if the said correction of boundaries is allowed, it would still be subject to the evidence to be led on the issue of description of the suit property by the parties.

8. Mr. Khairnar would submit that if the description of the boundaries is allowed to be corrected, the Plaintiff's right to prove the correct boundaries of the suit property should not be ousted. If that clarification is given, then he would not have any grievance. Undoubtedly, Mr. Khairnar is right in his proposition since the Plaintiff would be stepping in the witness box first and therefore it shall always be open from him to lead cogent and material evidence of the correct boundaries of the suit property, and only thereafter the burden would shift to the Defendant.

9. In that view of the matter, the impugned order dated 23.12.2021 passed below Exhibit-30 in Regular Civil Suit No.28 of 2019 is quashed and set aside and the Petition is allowed in terms of prayer clause 'b' subject to the right of the Plaintiff being expressly kept open to prove the correct description of the suit property as also boundaries of the same.

10. Mr. Khairnar would point out that another order dated 22.04.2022 passed below Exhibit-44 by the learned Trial Court is also the subject matter of challenge in Writ Petition No.13115 of 2022. In view of the above, the order passed below Exhibit-44 also stands quashed and aside.

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

[MILIND N. JADHAV, J.]

AJAY
TRAMBAK
UGALMUGALE
Digitally signed by
AJAY TRAMBAK
UGALMUGALE
Date: 2023.02.27
09:56:51 +0530