

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8922 OF 2019**

Sahil O. Kukreja

.. Petitioner

Versus

Anita Prakash Bhoir and Anr.

.. Respondents

-
- Ms. Somiksha Manek i/by M. M. Legal Associates for Petitioner
 - Mr. Ashish Gabhale i/by Jay & Co. for Respondent No.2 – M.I.D.C.
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CORAM : MILIND N. JADHAV, J.**DATE : JANUARY 11, 2023.****P.C.:**

1. Heard Ms. Manek, learned Advocate for Petitioner. None appears for Defendant No.1, though served. Affidavit of service filed by Petitioner on 29.12.2022 is on record.

2. The present Writ Petition has been filed taking exception to the order passed below Exhibit-53 in R.C.S. No. 243 of 2014 pending before the Civil Judge, Junior Division, Ulhasnagar.

3. By the impugned order, the application filed by the Petitioner on behalf of original Defendant No.2 has been rejected. The application is to the effect that there was an apparent clerical / typographical mistake appearing in the recording of the cross examination of the Defendant No.2 Mr. Anil Lunker on 20.02.2016 whereby while recording the cross examination the word “not” was not typed in

paragraph No.14 line No.6 of the said cross examination recorded on that date. Admittedly, the Defendant No.2 realised about the said mistake after going through the entire cross examination and filed the application dated 05.04.2019 seeking rectification of the aforesaid inadvertent error so recorded in the cross examination.

4. Ms. Manek, learned Advocate for Petitioner submitted that in order to consider the Petitioner's plea that the word "not" has not been typed by the scribe in the cross examination, one needs to read the contents of the cross examination as appearing in paragraph Nos.11, 12, 13 and 14 in its entirety. She submitted that the specific admissions given in paragraph No.14 by the deponent which in fact immediately appear from the succeeding sentence onwards till the end of paragraph No.14, if seen, clearly show that it was the Defendant's case that the suit property was not in the possession of the Plaintiff and / or her predecessor prior to the year 1940.

5. She submitted that however a question that was asked to the deponent in respect of the suit property and more specifically a repeated question specifically pointing out towards having possession of the suit property by the Plaintiff has been recorded correctly. For that, she has drawn my attention to the deposition in the later part of paragraph No.14 wherein it has been specifically recorded by the learned Trial Court in respect of possession as under:

“It is not true to say that actually Plaintiff is in possession of the suit property, however by way of agreement Defendant No.2 is shown in possession of suit property illegally.”

6. From the above it is seen that on perusal of the entire cross examination of the deponent Mr. Anil Lunker, it is clear that a consistent stand is maintained by the deponent in respect of the fact of possession namely that the Plaintiff is not in a possession of the suit property. This fact in evidence as argued by Ms. Manek is also fortified when one peruses the pleadings i.e. the written statement and the affidavit in evidence of the said Defendant No.2. Cogent reading of the paragraph Nos. 11, 12, 13 and 14 along with the entire deposition of the witness in evidence, the stand taken by the Defendant in his written statement makes it clear that it is the Defendant No.2's case that Plaintiff was not in possession of the suit property. In that view of the matter, it is therefore clear that the word “not” ought to have appeared in the deposition of the Petitioner in paragraph No.14 line No.6. It is an error apparent on the face of record which needs to be corrected in the interest of justice so as to enable the learned Trial Court to adjudicate the matter in respect of considering the evidence led by the respective parties for determination of the preliminary issue.

7. In view of the above observations and findings, the Writ Petition stands allowed. The impugned order dated 17.06.2019 passed below Exhibit-53 in R.C.S. No. 243 of 2014 stands quashed and set aside.

8. It is directed that the word “not” be inserted in line No.6 of paragraph No.14 of the deposition of the Petitioner as recorded by the learned Trial Court and the evidence be read accordingly at the time of arguments.

9. With the above directions Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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by SONALI
SATISH KILAJE
Date:
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