



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 5464 OF 2024

Aniket Baburao Raut

VERSUS

Dattatraya Shripatrao Kate And Others

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- Mr. D. P. Palodkar, Advocate for the Petitioner
- Mr. A. B. Kale a/w Ms. S. A. Kale, Advocate for the Respondent No. 1

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CORAM : R.M. JOSHI, J

DATE : DECEMBER 03, 2024

PER COURT :

1. This Petition takes exception to order dated 28.02.2024 passed below Exh. 132 filed by the Plaintiff in Special C.S. No. 46/2012 whereby written statement filed by the legal heirs of the deceased Defendant Nos. 1 and 2 is struck out.

2. The facts which led to the filing of this Petition are not in dispute. The original Plaintiff filed suit for specific performance of the contract on the basis of agreement to sale executed in the year 2010. The original Defendants filed written statement and have taken a plea that the suit property is their self acquired property and that they are absolute owner and possessors thereof. During the pendency of the

suit, Defendants died. Their LR's i.e., present Petitioner and others were brought on record. It is further not in dispute that they were brought on record in the capacity of LR's of deceased and not in their individual capacity or as independent Defendants. These defendants filed additional written statement, wherein plea contrary to the one taken by original Defendants was sought to be taken.

3. In the light of the aforestated facts, learned Trial Court allowed application Exh. 132 struck out the written statement filed by the Petitioner.

4. Learned Counsel for the Petitioner submits that the Trial Court has committed error in not considering the judgment of the Hon'ble Supreme Court in case of Jagdish Chander Chatterjee and Others vs. Shri Sri Kishan and Another, (1972) 2 SCC 461 in proper perspective. It is his submission that it is open for the legal heirs of the deceased Defendants to set up their own claim of independent title in the suit property. According to them, in this case the suit property is ancestral property and not self acquired property of the original Defendants and it is open to

them to take such defence though contrary to stand taken by Original Defendants. By relying upon the paragraph 10 of the judgment cited supra, it is sought to be canvassed that the only contingency in which such independent title cannot claimed by the LR's of the Defendants is that the Court before which the proceeding is pending have no jurisdiction to decide the same. He also placed reliance on the judgment of the Hon'ble Supreme Court in case of Abdul Razak (Dead) Through LR's and Others vs. Mangesh Rajaram Wagle and Others, (2010) 2 SCC 432 and has referred to paragraphs 29 to 33. It is, therefore, his contention that since the Trial Court has jurisdiction to decide the independent claim of the Petitioner in respect of his title in the suit property on the basis of the claim that the suit property is ancestral property, application Exh. 132 deserves to be dismissed.

5. Learned Counsel for contesting Respondent supported the impugned order.

6. Before dealing with legal submissions, it needs to be recorded that original Defendants filed written statement wherein specific plea is taken that

suit property is their self acquired property. After their death during pendency of suit, LR's were brought on record. They are not joined as independent Defendants but they stepped into the shoes of original Defendants. Since, written statement was already filed by the Defendants, their LR's could file additional written statement, if any.

7. Now question arises for consideration before this Court as to whether it is open for LR's of original Defendants to file additional written statement and to take contrary plea taken by their predecessor and more particularly, when original Defendants could not have been allowed to withdraw the admission of suit property being their self acquired property, the same could be allowed to be done by their legal representatives.

8. In order to appreciate the contentions of the learned Counsel for the Petitioner, the judgment cited supra needs to be taken a close look. In case of Bal Kishan vs. Om Prakash, (1986) 4 SCC 155, which is referred in the judgment of Abdul Razak (Dead) Through LR's and Others (supra), the Hon'ble Supreme Court

after considering judgment in case of Jagdish Chander Chatterjee (supra) and other judgments to hold that judgment in Jagdish Chatterjee (supra) would apply only to case where the Court hearing the case has jurisdiction to try the issues relating to independent title also. Apart from this, it was observed therein that in the said case additional written statement is filed ascertaining that premises in question being residential and commercial, the legal heir of the tenant could not be treated as a tenant as defined under Section 2(h) of the Haryana Urban (Control of Rent and Eviction) Act, 1973. This was not held to be inconsistent plea which is a plea taken by the original Defendants.

9. By referring to the judgment in case of Vidyawati vs. Man Mohan (1995) 5 SCC 431, it is observed thus:

*32. In Vidyawati's case, this Court considered the question whether a person impleaded as a legal representative of the deceased defendant can independently claim title to and interest in the property under a will. It was contended by the appellant that claim of the original defendant and that of the legal representative are founded on the will executed by Champawati*

and the courts below were not right in refusing to permit her to file additional written statement. While approving the view taken by the courts below, this Court observed

"3. ...Whether the petitioner has independent right, title and interest dehors the claim of the first defendant is a matter to be gone into at a later proceeding. It is true that when the petitioner was impleaded as a party-defendant, all rights under Order 22 Rule 4(2), and defences available to the deceased defendant became available to her. In addition, if the petitioner had any independent right, title or interest in the property, then she had to get herself impleaded in the suit as a party-defendant. ...[thereafter, she could] resist the claim made by the plaintiff or challenge the decree that may be passed in the suit." (Emphasis supplied)

For taking this view, the Court relied upon the judgments in J.C. Chatterjee's case and Bal Kishan's case.

33. The judgments of Bal Kishan case and Vidyawati case are clearly distinguishable. In the first case, the earlier judgment in Jagdish Chander Chatterjee case, which substantially supports the appellants was distinguished on the ground that the plea raised by the impleaded legal representative of the tenant was inconsistent with his defence and, if accepted, the same would result in ouster of the jurisdiction of the Rent Controller.

*In the second case also, the Court found that the plea raised by the appellant, who was impleaded as legal representative of the defendant that she had independent title under the will executed by Champawati was not in consonance with the plea taken by the original defendant. However, as discussed in the earlier part of the judgment, the claim made by the appellants is in no way inconsistent with or derogatory to the defence set up by Abdul Razak. In any case, once the additional written statement filed by the appellants was taken on record without any objection by respondent Nos. 1 and 2, who also led their evidence keeping in view the pleadings of the additional written statement, the High Court was not at all justified in allowing the application filed for striking off the additional written statement and that too without even advertng to Order 6 Rule 16 CPC and considering whether respondent Nos. 1 and 2 were able to make out a case for exercise of power by the court under that provision.*

The above observations of Hon'ble Supreme Court clearly show that since the claim made therein by Appellants was in no way inconsistent with or derogatory to the defence set up by Abdul Razak and as the written statement was taken on record without any objection of Respondents and evidence was also led on additional evidence, order impugned therein was

interfered with.

10. Now, therefore, question arises before this Court is as to whether merely because Trial Court has jurisdiction to decide the title in respect of the suit property, whether it would be permissible for the LR's of the deceased to take stand inconsistent/contrary to the one taken in the written statement filed by them. This issue can be considered from another angle i.e., to say that what is prohibited for the original Defendants would also be prohibited to the LR's of the Defendants. Since, it was not also permissible for the original Defendants to file any additional written statement and take plea inconsistent to the plea that the suit property is self acquired and thereby withdraw admissions given in written statement. Had it been a case that the Petitioner is joined as independent Defendant, only in such case he could take any independent plea. However, this cannot be construed that he would be permitted to file additional written statement to withdraw admission filed by original Defendants. Admittedly the Petitioner is the LR's of original Defendant, it would not be permitted to him to

take plea inconsistent to original Defendants and which was otherwise not permissible to be taken by the original Defendants.

11. In respectful view of this Court, judgments cited supra do not help the Petitioner to support his case, in any manner. In the result, Petition stands dismissed.

12. At this stage, learned Counsel for the Respondent seeks expeditious disposal of the suit by the Trial Court.

13. Since suit of year 2012, Trial Court is directed to decide the same expeditiously and in any case, within a period of 1 year from today.

(R.M. JOSHI, J.)