



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6387 OF 2024

Sudhir Dharmal Babade

VERSUS

Sunil Dharmal Babade And Others

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Mr. R. S. Deshmukh, Senior Advocate a/w Ms. Ashwini
Sahastrabudhe i/by Mr. D. R. Deshmukh, Advocate for the
Petitioner

Mr. S. V. Dixit, Advocate for Respondents

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CORAM : R.M. JOSHI, J

DATE : JULY 01, 2024

PER COURT :

1. By consent of both sides, heard finally at
admission stage.

2. In this Petition Original Plaintiff in Special
C.S. No. 92/2021 takes exception to order passed below
Exh. 25 in RCA No. 17/2020 by the District Court
rejecting application for amendment under Order VI,
Rule 17 of Code of Civil Procedure.

3. The facts as they appear from the record
indicate that Petitioner/Plaintiff filed suit with
averment that suit property stands in the name of
father of the Plaintiff and Defendants and that on his
death they are entitled for the equal share i.e., 1/4th

share in the suit house. An application was moved by the Defendants for rejection of the plaint under Order VII, Rule 11(d) of CPC. The learned Trial Court by passing impugned order dated 22.12.2021 held that the suit is barred by limitation and hence, plaint is rejected. The said order is taken exception to by filing RCA No. 17/2022 which is pending for decision.

4. During the pendency of the said Appeal, an application was moved for amendment to the plaint with the contention that the suit property is purchased by the father of the Plaintiff and Defendants out of the income derived from the ancestral properties. This contention of the Plaintiff is opposed by the Defendant. Learned District Judge-1, Latur rejected the application by passing impugned order.

5. Learned Senior Advocate for Petitioner submits that the learned District Judge has committed error in rejecting the application by not considering the pleading in the plaint in proper perspective. It is submitted that the amendment sought by the Plaintiff is not inconsistent to the plea already raised. This submission is sought to be challenged by the Counsel

for the Respondents by contending that once the suit is filed, pleadings that father of Plaintiff and Defendants died intestate, and they have equal share in suit property, it has to be presumed that the plaint if admitted that the suit property is self acquired property of the father.

6. There cannot be any dispute with regard to the proposition of law that in order to bind any admission such admission must be clear and unequivocal. Such admission should be so clear that it requires no interpretation to be done of statement of party. Similarly, there is no complete bar and it is open for party to explain the admission in the context and circumstances it was made. In such circumstances, learned District Judge was not justified in rejecting the said application. More particularly, stage at which the learned District Judge has rejected the application indicates that at least at this stage it was not permissible for said Court to interpret the pleadings of the Plaintiff to hold it as admission of the suit property being self acquired property of the father of Plaintiff and Defendants.

7. During the course of hearing of present Petition a specific query was raised to the Counsels for both sides as to whether the said amendment would have bearing on the decision of the Appeal in which order of rejection of plaint is challenged which is answered in negative.

8. Learned Senior Counsel for the Petitioner has drawn attention of the Court to the observations made by the Trial Court while rejecting the plaint which according to him are beyond the pleadings in the plaint and having regard to the scope of Order VII, Rule 11, consideration of material other than in plaint, would make said order not sustainable. Learned Counsel for Respondents opposed the said contention by stating that it was within the knowledge of the Petitioner/Plaintiff about the filing of the Civil M.A. No. 16/2012 and hence, no fault can be found in order of rejection of plaint.

9. Since the Appeal is pending against the impugned order passed by the learned Trial Court, this Court refrains itself from making any observations in this regard. Suffice it to say that considering settled

position of law on rejection of plaint under Order VII, Rule 11 CPC, it is necessary for the First Appellate Court to consider as to whether the order passed by the Trial Court is on the basis of pleadings in the plaint only or by taking aid other material such as application filed by the Defendants. This Court trusts that the First Appellate Court would decide the Appeal keeping in mind settled law on the point.

10. In any case, the order of rejection of application under Order VI, Rule 17 CPC cannot sustain. And hence, impugned order is set aside. Thus, liberty is granted for the Petitioner/Plaintiff to revive the said application at appropriate stage. All issues pertaining to the amendment application are kept open.

11. Petition stands disposed of in above terms.

(R. M. JOSHI, J.)

Malani