

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1760 OF 2022

Sugandha Anil Sankanna

.. Petitioner

Versus

Raoso Kalgonda Patil and Anr.

.. Respondents

.....

- Mr. Abhijit M. Adagule, Advocate for Petitioner.
- Ms. Pallavi A. Karanjkar i./by Mr. Sandeep Koregave, Advocate for Respondents.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 08, 2024

P.C.:

- 1.** Mentioned out of turn.
- 2.** Heard Mr. Adagule, learned Advocate for Petitioner.
- 3.** The Petitioner who is original Plaintiff before the learned Trial Court preferred an Application below Exhibit-44 at Exhibit-C, page No.34. This Application was filed under Order VI, Rule 17 of the Civil Procedure Code, 1908 (for short '**CPC**') seeking specific amendment with respect to nomenclature of the subject property which is stated in paragraph No.5 of the Application. It is resisted by Defendants and in that view of the matter, order dated 11.04.2018 which is impugned before me came to be passed rejecting the Application. The reason given by the learned Judge is that while framing the issues, issue No.3 was already framed with respect to entitlement of the Plaintiff in the suit for partition as also the share of the parties and therefore in that view of the matter, amendment

sought for by the Plaintiff in paragraph No.13 was disallowed. In view of the rejection of the Application, Defendants immediately filed a fresh Application below Exhibit-87 for deletion of the aforesaid issue, *inter alia*, pertaining to the nomenclature of the property to be described as sought for by Petitioner in his Application below Exhibit-44 and incidentally that Application below Exhibit-87 came to be allowed by the learned Trial Court by its order dated 06.03.2018.

4. Deleting the said issue No.3 is clearly detrimental to the claim and prospect of the Plaintiff's case before the Trial Court. Ms. Karanjkar, learned Advocate appearing for the Defendants in the suit proceedings in her usual fairness would submit that filing of the Application below Exhibit-87 ought not have to be done because Review Application which has been preferred by the Plaintiff thereafter stood dismissed.

5. Both the learned Advocates are *ad idem* that parties to the suit would have to ultimately prove their substantive right in the suit property but for that the suit property needs to be described by its correct nomenclature. By that they would mean that the suit property needs to be described correctly and appropriately in the prayer clause of the suit namely paragraph No.13 of the suit plaint.

6. In view of the above, the impugned order dated 11.04.2018 stands quashed and set aside. Also order dated 06.03.2018 passed

below Exhibit-87 stands quashed and set aside. Application filed below Exhibit-44 stands allowed. Original issue No.3 which was deleted stands restored

7. Amendment to the effect of carrying out correction in paragraph No.13 stands allowed. Necessary amendment is permitted to be carried out within a period of two weeks from today before the learned Trial Court. Copy of the amended suit plaint without Annexures shall be served upon Defendants by the learned Advocate appearing for the Plaintiff in the Trial Court. Suit to proceed thereafter, strictly in accordance with law.

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

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
SAWANT
Digitally signed
by HARSHADA
HANUMANT
SAWANT
Date:
2024.01.09
17:56:50 +0530