

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.84 OF 2024

Rajendra Jaisingrao Pawar

Applicant
.. (Orig. Plaintiff)

Versus

Popat Dhondiba Jadhav and Ors.

Respondents
.. (Orig. Defendant Nos.1 to 8)

WITH
INTERIM APPLICATION NO.1293 OF 2024

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• Ms. Neha Ramesh Kokare, Advocate for Applicant.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 13, 2024

P.C.:

- 1.** Heard Ms. Kokare, learned Advocate for Applicant.
- 2.** This Civil Revision Application takes exception to the impugned order dated 06.11.2023. The order is passed in Application filed under Exhibit-151 in Regular Civil Suit No.29 of 2010. An interlocutory order is challenged in the present Civil Revision Application.
- 3.** Regular Civil Suit No.29 of 2010 is filed by the Plaintiff – Rajendra Pawar seeking declaration and permanent injunction in respect of suit land bearing Gat No.848/12/ A totally admeasuring 4 Hectares 45 R, with a caveat that 40 R out of this suit land was donated by Plaintiff by registered gift deed dated 01.12.1998 to Bandhkam Vibhag of the State Government of Maharashtra. Pursuant

thereto the resthouse was built upon the aforesaid 40R land which was completed in the year 2001 and since then the said land stands, rather enures to the benefit of the State Government of Maharashtra to the exclusion of the right, title and interest of the donor i.e. Plaintiff before the Trial Court.

4. In the course of leading evidence in support of Plaintiff's case, Plaintiff has led evidence of three witnesses till date. PW No.1 and PW No.2 are Plaintiff's witness whose evidence is completed. In order to prove the aforementioned fact of donation of land, Plaintiff has preferred an application for issuing witness summons to PW No.3 who is working as Deputy Engineer in the Public Works Department of State of Maharashtra and stationed at Mauje – Bawada, Taluka – Indapur, District – Pune. PW No.3 has filed Affidavit-in-lieu of examination-in-chief which has been taken on record and marked as Exhibit-149. The Affidavit comprises of five paragraphs. Paragraph Nos.1 to 3 describe the aforementioned position in respect of the registered gift deed and all subsequent action. Further paragraph No.4 and paragraph No.5 describe the position with respect to the one of the boundaries of the gifted land while giving a reference to an entry in the revenue record dated 01.02.2018 in respect of correction of boundaries. While reading the Affidavit of PW No.3, learned Trial Court has observed the contents of paragraph Nos.4 and 5 with

reference to the above and has by the impugned order expunged the said contents. The impugned order is at page No.15.

5. It is seen that by virtue of the contents of paragraph Nos.4 and 5, a case which is completely alien and foreign to the original suit proceedings rather would be introduced in the suit proceedings which would give rise to further issues, apart from the issue of declaration. The learned Trial Court while analysing the contents has returned a cogent finding in paragraph Nos.4, 5 and 6. It is seen that after noting the above, the learned Trial Court has passed an interlocutory order calling upon the Plaintiff to explain the same and Plaintiff having failed to explain the same, learned Trial Court was left with no other option to decide the validity and legality of the contents of paragraph Nos.4 and 5 *qua* the principal reliefs prayed for in the suit proceedings.

6. Ms. Kokare in support of her case and challenge to the impugned order placed on record a decision of the Single Judge of this Court (Coram : A. S. Oka, J.) in the case of ***Harakchand Gulabchand Dhoka V/s. Kashinath Narsingh Marathe***¹ and drawn my attention to paragraph No.6 thereof. She would submit that this Court has held that once Affidavit-in-lieu of examination-in-chief is filed it partakes the character of examination-in-chief of the witness and there is no provision under the Civil Procedure Code, 1908 which directs deletion of any portion from or in the Affidavit-in-lieu of examination-

¹ 2010 6 Bom CR 379

in-chief while giving an opportunity to raise any objection to be taken in writing to any objectionable portion of the Affidavit-in-lieu of examination-in-chief by the opposite party.

7. I have perused paragraph No.6 of the said decision. It cannot be considered as argued by the learned Advocate. *Prima facie* it is seen that the case put up in paragraph Nos.4 and 5 is completely extraneous to the suit proceedings. In the aforesaid decision in paragraph No.6 it is infact observed that party to the suit cannot be permitted to go beyond the pleadings. This is one more reason as to why the learned Trial Court is correct in expunging the contents of paragraph Nos.4 and 5. It needs to be reiterated that PW No.3 has been summoned as a production witness. He is not a witness of the Plaintiff for the purpose of proving Plaintiff's case of declaration and permanent injunction. In view of the fact that admittedly a portion out of suit property was gifted by the Plaintiff to the State of Maharashtra, necessity of proving the said gift deed has arisen in the said case as the said property of 40R is comprised in the suit property.

8. In that view of the matter and more specifically adhering to the provisions of Section 151 of Code of Civil Procedure, 1908, I find no reason to interfere with the said order. The deletion and expunging of the contents of paragraph Nos.4 and 5 with respect to the boundary issue is not germane to the reliefs in the suit

proceedings. In view of the pleadings in the suit plaint as also the prayers prayed for by the Plaintiff, I find no reason to interfere with the impugned order and the same is sustained. Civil Revision Application is dismissed.

9. Considering that the suit is pending since the year 2010 and 14 years have been passed, learned Trial Court is directed to decide the suit proceedings as expeditiously as possible and in any event preferably within a period of one year from today. Parties to the suit are directed by this Court not to seek adjournments and the learned Trial Court shall not give any unnecessary adjournments to the parties unless absolutely necessary.

10. Civil Revision Application is accordingly disposed.

11. In view of this order, Interim Application No.1293 of 2024 is also disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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