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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4348 OF 2024

~~Mangala Motilal Bhuta~~

(Since Deceased) Through her Lrs.

Mrs. Lekha Ghanashyam Dholkia

.. Petitioner

Versus

M/s. Odhawji Lawji and Co. and Anr.

.. Respondents

.....

- Mr. Shreyash A. Yande, Advocate for Petitioner.

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 03, 2024.

P.C.:

- 1.** Heard Mr. Yande, learned Advocate for Petitioner.
- 2.** Mr. Yande, learned Advocate for the Petitioner has taken me through the pleadings and would submit that the rights of the Plaintiffs and Defendants in the Suit property are intertwined in the facts of the present case. He would submit, Defendant No.1 firm admittedly had two partners, namely Arvindkumar Odawji Bhuta i.e. Defendant No.2 and the other being Mondas Lawji Bhuta father in law of original Plaintiff i.e. Mangala Motilal Bhuta. He would submit that Mangala Motilal Bhuta expired in the interregnum and her legal heirs are now prosecuting the Suit. He would submit that the amendment sought for by the Plaintiffs pertains to substantive rights of Mondas Bhuta in the Suit property and in that view of the matter, the declaratory relief has been sought by virtue of the Application seeking amendment.
- 3.** Order impugned is dated 13.07.2023 passed in Application

under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short “CPC”) rejecting the Application. Special Civil Suit No.1673 of 2019 is filed seeking a declaration that the Suit property namely property bearing No.323-A comprising of a fully tenanted building with land be declared as property belonging to the partnership firm, namely Defendant No.1 and not as the exclusive property of Defendant No.2 i.e. Arvindkumar Odawji Bhuta. Application seeking amendment under Order VI Rule 17 of the CPC is filed in the year 2023 to introduce a substantive amendment to seek a challenge to the confirmation deed dated 24.06.2009 which presumably may affect the rights in the Suit property and also seek a declaration that the Will of Mr. Mondas Lawji Bhuta dated 27.08.1974 would not be binding on the Plaintiffs which also may presumably affect the rights in the Suit property. The question which, *prima facie*, arises is that of due diligence. Party was aware about the above issues and documents at the time of filing of the Suit. The learned Trial Court has dismissed the Application on this ground itself. That apart, no challenge in this fashion can be allowed to be maintained with respect to seeking a declaration in respect of a registered document of the year 2009 and with respect to the binding effect of a Will of 1974 in the year 2022 – 2023. Limitation, *prima facie*, is writ large on the face of record and in that view of the matter, the learned Trial Court has passed the impugned order.

4. I agree with the reasons given by the learned Trial Court in paragraph Nos.8 to 11 of the order dated 13.07.2023 and I do not find any reason to interfere with the order dated 13.07.2023. The order is sustained and confirmed.

5. Considering that the Suit is of the year 2019, the learned Trial Court is directed by this Court to dispose of the Suit proceedings as expeditiously as possible and in any event within a period of one year from today, strictly in accordance with law.

6. The learned Trial Court is directed not to grant any unnecessary adjournments to the parties unless absolutely necessary.

7. Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings.

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

[MILIND N. JADHAV, J.]

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