

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 166 OF 2024
WITH
INTERIM APPLICATION NO. 6521 OF 2024
IN
SECOND APPEAL NO. 166 OF 2024

Laxman Genuji Satav Since
Deceased Through His Heirs

And Legal Representative & Ors.

.. Appellants

Versus

Kailash Laxman Satav & Ors.

.. Respondent

...

Dr. Uday P Warunjikar a/w Mr. Sumit S. Kate a/w Mr. Ganesh Kalekar for
the Appellants.

Mr. G. S. Godbole, Senior Advocate a/w Mr. S. C. Wakankar for the
Respondent.

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CORAM : SANDEEP V. MARNE J.

DATE : 21 MARCH 2024.

P. C.:-

1) Appellants have filed this Appeal challenging the decree dated 12 January 2024 passed by District Judge, Pune dismissing Regular Civil Appeal No. 644 of 2017 and confirming the Decree dated 14 September 2017 passed by the 2nd Additional Judge, Small Causes Court and Joint Civil Judge Senior Division, Pune in old Special Civil Suit No. 982 of 2008 (new Special Civil Suit No. 82 of 2011).

2) Original Plaintiff No.1-Kailash Laxman Satav along with his sister Kaushalya Sopan Bhujbal filed Special Civil Suit No. 82 of 2011 seeking partition and separate share in the suit properties. Plaintiff No.2 - Kaushalya also sought a declaration that the Relinquishment Deed dated 11 June 1992 executed by her was not binding on Plaintiffs. It appears that Plaintiff No. 1 - had sold his undivided share in the suit properties in favour of Plaintiff Nos. 3 to 6, accordingly said purchasers were also joined by Kailash and Kaushalya as Co-Plaintiffs in the suit. Defendants appeared in the suit and filed written statement raising various defences. They contended that Laxman Genuji Satav had son name Kailash, who disappeared in the year 1985. That Kailash married his cousin brother's daughter Meena which was against the customs and traditions of Hindu family. That whereabouts of Kailash were not known, who did not attend last rites of Laxman Genuji Satav who expired on 17 February 1992. Defendants contended that as whereabouts of Kailash were not known for 7 years after his disappearance, he was presumed to have died civil death. They accordingly denied that Plaintiff No.1 Kailash was part of the joint family. So far as Plaintiff No.2-Kausalya is concerned reliance was placed on Relinquishment deed executed by her.

3) It appears that during pendency of the suit, Plaintiff No. 2-Kausalya compromised her suit with the Defendants and filed a pursis to that effect. Thus, the suit was essentially prosecuted by Plaintiff No.1 Kailash and purchasers (Plaintiff Nos. 3 to 6). Defendants amended the written statement and incorporated averment therein relating to impartibility of the suit properties. They admitted in the amended written statement that Plaintiff No.1 was son of Laxman Satav, but they contended that on account of his prohibited marriage in blood relation, he no longer remained as part of joint family and was therefore not entitled to seek partition.

4) It appears that the Defendants/Appellants did not enter witness box to lead evidence. The Trial Court proceeded to decree the suit declaring that Plaintiff No.1 Kailash has undivided 1/7th in all the three properties bearing survey Nos. 66, 67 and 70. It directed the Collector to determine 1/7th share of Plaintiff No.1 in land bearing Survey No. 70/3. So far as lands bearing survey Nos. 66 and 67 are concerned some construction was commenced by the Defendants thereon in pursuance of a development agreement and therefore the Trial Court directed that in the event of any difficulty in partition of land bearing survey Nos. 66 and 67, the Court Commissioner shall determine valuation of the lands as on the date of execution of agreements with the developer (Defendant No.6) and thereafter determine 1/7th share of the Plaintiff in terms of money as per valuation. Further enquiry was directed into mense profits. Defendants were restrained from creating third party rights in respect of the suit properties till partition thereof by metes and bounds. They were also restrained from carrying out any development or construction in the suit properties so as not to deprive Plaintiff No. 1 of his 1/7th share in the suit properties.

5) Defendants/Appellants challenged Trial Court's Decree dated 14 September 2017 before District Judge Pune by filing Regular Civil Appeal No. 644 of 2017. When Appeal was ripe for hearing, Appellants were advised to file application for amendment of plaint, which was filed on 20 September 2023 contending that there were typographical errors in the plaint. Appellants essentially wanted to wriggle out of the admission that Plaintiff No. 1 Kailash was son of Laxman Satav. They desired to introduce an amendment to the effect that the said contention was without prejudice. The First Appellate Court rejected the amendment application by Order dated 30 September 2023. In the meantime, by Order dated 11 December 2023, this Court, in an Appeal from Order, had requested the First Appellate Court

to decide the Appeal by 15 January 2024. Appellants were advised to file application before Principal District Judge seeking transfer of the Appeal from the learned Judge, who was hearing Regular Civil Appeal No.644 of 2017. The Principal District Judge rejected the application by Order dated 6 January 2024. On 10 January 2024, Appellants filed Writ Petition in this Court challenging the Orders rejecting amendment and request for transfer of appeal. During pendency of those Petitions, the First Appellate Court, however, decided the Appeal by Judgment and Decree dated 12 January 2024 and proceeded to dismiss the same. While dismissing the Appeal, the First Appellate Court has imposed cost of Rs.5,00,000/- on Appellants. It has further continued the Order of injunction, status-quo and police protection till actual partition by metes and bounds. Liberty has been granted to Plaintiff No.1 Kailash to file independent application for contempt of Court against Appellants. Aggrieved by the decision of the First Appellate Court, the Appellants have filed the present Appeal.

6) Dr. Warunjikar, the learned counsel appearing for Appellants would raise essentially following six points in support of his challenge to the decree of the First Appellate Court:

- i) That First Appellate Court decided the Appeal with undue haste. That Writ Petitions challenging the Orders rejecting amendment application and request for transfer of the Appeal were filed on 10 January 2024 and that circulation therein was granted by this Court on 17 January 2024, but the First Appellate Court deliberately dismissed the Appeal with undue haste on 12 January 2024 with a view to frustrate the pending Petitions.
- ii) That the First Appellate Court was biased against Appellants. That the bias was apparent on numerous occasions, when he passed Order dated 18 September 2023 for provision of police protection, rejected Application for amendment by imposition of costs of Rs.5,000/-, imposed further costs of

Rs.10,000/- in another application, etc. That the bias of the First Appellate Court is apparent from the fact that he has not only imposed cost of Rs.5,00,000/- while dismissing the Appeal, but has presumed that Appellants would violate the order and has granted liberty to the Original Plaintiff No.1 to adopt contempt proceedings against the Appellants.

iii) That the Trial Court had passed Order dated 8 May 2017 for framing of additional issues relating to description of property as well as for modification Issue No.6. However, in the final decree, the learned Judge neither framed additional issues nor modified Issue No. 6. That this aspect was raised before the First Appellate Court, which is neither considered or decided.

iv) That during the course of cross examination, original Plaintiff No. 1 admitted that he would be satisfied if he was paid amount of Rs.2,80,00,000/- or agricultural land admeasuring 61 Guntha. That on this admission of Plaintiff No. 1, the Trial Court ought to have decreed the suit in the sum of the Rs.2.80 Crores under provisions of Order 12 Rule 6 of the Code of Civil Procedure. He would submit that for the purpose of passing of decree under Order 12 Rule 6, of the Code, admission need not be in the pleadings and that the same can be given in evidence as Rule 6 uses the words "*either in pleadings or otherwise*".

v) That the burden of proving the assertion that Plaintiff No.1 Kailash is son of Laxman Satav rested on shoulders of Plaintiff No.1 who failed to lead any evidence to prove the said assertion. That in absence of any evidence on record the Trial Court and the First Appellate Court erred in accepting Kailash as son of Laxman Satav.

vi) That the suit was barred by limitation as Plaintiff No.1 had disappeared in 1985 and was presumed to be dead on expiry of period of 7 years in the year 1992 and that therefore the suit filed by him in the year 2008 seeking partition was clearly barred by limitation.

7) I have also heard Mr. Godbole the learned Senior Advocate appearing for Respondent No.1.

8) So far as the first objection of the First Appellate Court acting with undue haste is concerned, I find the submission to be totally misconceived. The Appeal was filed by Appellants before First Appellate Court on 10 November 2017. In the amended written statement, Appellants had specifically pleaded that they admitted Original Plaintiff No.1 Kailash as the son of Laxman Satav. Based on this admission, the Trial Court had decreed the suit of Kailash granting him 1/7th share in the suit property. It is only when the Appeal came up for final hearing that Appellants thought of filing application for amendment of written statement to incorporate some words in the relevant sentence so as to show as if the pleading admitting Kailash's relation with Laxman Satav was without prejudice. In short, Appellants attempted to incorporate an amendment in the written statement to deny Kailash's relationship with Laxman Satav as son. The amendment was thus diametrically opposite the original pleadings admitting Kailash to be Laxman Satav's son. It must be noted here that Appellants did not think it necessary to amend the written statement, when the suit remained pending for a long time of 9 years. After the suit was decreed and the Appeal was filed, they did not think it necessary to amend the written statement for 5 long years. It appears that the construction at site in lands bearing survey Nos. 66 and 67 was progressing with great speed and there was no restraint order passed in appeal stopping the construction. Therefore any delay in decision of appeal was to enure to the benefit of Appellants.

9) After the suit was decreed, Appellants had secured Order dated 24 November 2017 by which the entire decree was stayed during disposal of the Appeal. The said Order dated 24 November 2017 was challenged by

Plaintiff No.1 Kailash in this Court in Writ Petition No. 1033 of 2018 and this Court permitted the execution proceedings to go on, but possession was stayed till final outcome of the Appeal. The hearing of Appeal before the First Appellate Court was expedited by Order dated 11 July 2018. However the appeal was not getting decided and construction was progressing with rapid speed at the site in lands bearing survey Nos. 66 and 67. Therefore the First Appellate Court passed Order dated 18 September 2023 directing parties to maintain status-quo, which prevented Appellants from carrying on further construction. Order dated 18 September 2023 was challenged by Appellants by filing Appeal from Order No. 1000 of 2023. In that Appeal, both the parties agreed that status-quo Order passed by the District Judge on 18 September 2023 could be vacated and instead, hearing of the Appeal can be expedited. The Appeal from Order was accordingly disposed of by this Court on 11 December 2023 setting aside the Order dated 18 September 2023 and requesting the First Appellate Court to expedite the hearing of the Appeal and to make an endeavor to decide the same by 15 January 2024. The said request was made on account of complaint made by original Plaintiff No.1 that the Appellants were deliberately delaying decision of the Appeal. This Court noted that arguments on behalf of original Plaintiff No.1 were already complete by 11 December 2023.

10) Thus, as per Order passed this Court on 11 December 2023, the appeal was to be decided by 15 January 2024. The Order dated 11 December 2023, which was secured by consent of the Appellants, who consented for that Order so as to lift the order of status-quo. The Appellants thus secured an order of lifting of status-quo on a promise that the Appeal itself can be decided by 15 January 2024. However, the conduct displayed by Appellants after 11 December 2023 is shocking. Rather than arguing their Appeal, they filed application on 13 December 2023 alleging bias against the learned

judge of the First Appellate Court. The said application was required to be heard urgently by the Principal District Judge considering the order passed by this Court requesting decision of appeal before 15 January 2024. The Principal District Judge accordingly dismissed the application for transfer by passing order dated 6 January 2024.

11) At this juncture, when only five days were left for decision of the Appeal, Appellants came up with an idea of challenging the Order dated 30 September 2023 by which their application for amendment of written statement was rejected and accordingly filed Writ Petition in this Court on 10 January 2024 challenging the Order dated 30 September 2023. A separate Writ Petition was filed on the same day i.e on 10 January 2024 to challenge Order dated 6 January 2024 rejecting application raising allegation of bias. Thus, after securing an Order of lifting of status-quo from this Court on 11 December 2023 under promise of getting the Appeal decided by 15 January 2024, the Appellants started adopting delaying tactics by raising allegations of bias by filing application on 13 December 2023 and thereafter filing two Writ Petitions in this Court on 10 January 2024.

12) The First Appellate Court was under request of this Court to decide the Appeal by 15 January 2024, which request was made to it, on account of consent of the Appellants. In these circumstances, it is difficult to hold that the First Appellate Court acted in undue haste as alleged. On the contrary, I am of the firm view that the Appellants were playing dilatory tactics by deliberately delaying decision of the Appeal after securing Order of vacation of status-quo from this Court on 11 December 2023. The First Appellate Court has rightly held that the tactics adopted by Appellants were deliberate and intentional. I am therefore not in agreement with the submission of Dr. Warunjikar that any undue haste was shown by the First Appellate Court in deciding the Appeal.

13) The second issue about bias against the learned Judge of the First Appellate Court deserves to be rejected in the light of the findings recorded on the first issue of undue haste. After considering the overall conduct of the Appellants, where they were deliberately delaying decision of Appeal after securing Order dated 11 December 2023 from this Court with ulterior motive of going ahead with the construction, any neutral judge would have acted in the manner, the learned judge of the First Appellate Court has acted in the present case. He was under request from this Court to decide the Appeal by 15 January 2024 and he has merely honored the said request. The steps taken by him for early decision of the Appeal does not mean that the learned judge had any bias against Appellant. Also of relevance is the fact that while consenting before this Court on 11 December 2023 for decision of appeal by 15 January 2024, Appellants never expressed any bias against the learned judge and thought of making application alleging bias two days after securing order of lifting the status quo. The application was thus made with ulterior objective of delaying the decision of appeal.

14) The third objection of failure of the Trial Court to frame additional issue relating to description of suit property and modification of issue No.6 is again completely misplaced. By Order dated 8 May 2017, the Trial Court had merely recorded an opinion that framing of additional issue and modification of 6th issue may be warranted. He however thought it appropriate to hear the Advocates of both the sides before taking any final decision in that regard. It is not known, and Dr. Warunjikar himself does not know, whether Appellants opposed framing of additional issue or modification of issue No.6. Be that as it may. Perusal of the decree of the Trial Court would indicate that framing of additional issue or modification of issue No.6 was not at all warranted. The case before the Trial Court in the

light of admission given by Defendants about relationship of Kailash with Laxman was simple. Once Kailash was accepted as Laxman's son, there was no way that Trial Court could have denied 1/7th share to Kailash alongwith his siblings. Therefore, no error can be found in the Trial Court not framing additional issue or not modifying issue No.6. The objection is therefore rejected.

15) The fourth contention of Dr. Warunjikar is about failure on the part of Trial Court to decree suit on admission of Plaintiff No.1 under provisions of Order 12 Rule 6 of Code of Civil Procedure. In my view, mere stray statement made in the cross examination that Plaintiff No.1 was willing to accept amount of Rs. 2,80,00,000/- towards his share could not have been a reason for the Trial Court to decree the suit in the sum of Rs. 2.80 Crores. Furthermore, after extracting stray admission from Plaintiff No.1, defendants did not come forward by offering the amount of Rs. 2.80 Crores to Plaintiff No. 1. Furthermore, no application was filed by Defendants for decree of suit in sum of Rs.2.80 Crores by offering the same to Plaintiff No.1. The contention in this regard therefore is stated only to be rejected.

16) The next contention of Dr. Warunjikar is about failure to discharge the burden of proving Kailash's relationship as Laxman's son. According to Dr. Warunjikar, some evidence was required to be led by Plaintiff No.1 to prove that he is Laxman's son. In my view, it was not at all necessary for Plaintiff No.1 to prove his relationship with Laxman in the light of specific admission given by defendants in the written statement that Plaintiff No.1 is Laxman's son. There was no debate before the Trial Court about relationship of Plaintiff No.1 with Laxman Satav. In fact, Defendants/Appellants failed to lead any evidence in the suit. Therefore, the contention in this regard deserves outright rejection.

17) The last point raised Dr. Warunjikar is on limitation. The limitation for filing suit for partition under Article 110 of Limitation Act is 12 years from the date of exclusion from joint family property. It is not the case of Appellants that Plaintiff No.1 demanded a share in the suit property and that the same was denied to him 12 years before the filing of the suit. The period of limitation for filing suit for partition cannot be computed from expiry of period of 7 years from the date of alleged disappearance of Plaintiff No.1 as sought to be contended by Dr. Warunjikar. Therefore, the contention with regard to limitation does not merit any consideration.

18) After considering overall conspectus of the case, I am of the view that no substantial question of law is involved in the Appeal and the Second Appeal must fail.

19) However, I find that the costs imposed by the First Appellate Court on Appellants is excessive. No doubt, the manner in which Appellants conducted themselves before First Appellate Court, they deserved imposition of costs. At the same time imposition of costs of Rs. 5,00,000/- appear to be excessive.

20) The Second Appeal is accordingly **rejected** except to the modification that the quantum of costs in the decree dated 12 January 2024 passed by District Judge-9 Pune in Regular Civil Appeal No. 644 of 2017 is reduced to Rs.1,00,000/-. The decree be modified accordingly.

21) In view of rejection of Second Appeal, Interim Application No.6521 of 2024 does not survive. The same also stands disposed of.

[SANDEEP V. MARNE J.]