

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1823 OF 2022

Sadashiv Sitaram Ingale

Petitioner

.. (Orig. Plaintiff)

Versus

Balu Sitaram Ingale and Ors.

Respondents

.. (Orig. Defendants)

.....

- Mr. G. N. Salunke i./by Mr. Amol Dhumal, Advocate for Petitioner.
- None for Respondents.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 29, 2024

P.C.:

1. Heard Mr. Salunke, learned Advocate for Petitioner.
2. After hearing Mr. Salunke on 09.01.2023, following order was passed:-

- “1. Heard Mr. Salunke, learned Advocate for Petitioner.
2. Perused the impugned order dated 11.10.2021.
3. Petitioner has filed Application below Exhibit-47 under Order VI Rule 17 on the ground that the pursuant to say and written statement filed by Defendant No.1 and 3 that two properties belonging to the family situated in Gat No. 253 and 243 were not included in the Partition Suit the said properties were required to be included in the list of properties. According to Petitioner such disclosure came to his knowledge only on 11.02.2020 and 17.02.2020 as stated in Exhibit-47. In view of this specific averment, the learned Trial Court ought to have considered the same in its proper perspective, rather than the learned Trial Court rejecting the Application below Exhibit-47 on the ground of due diligence on the part of the Petitioner.
4. An arguable case has been made out by the learned Advocate for Petitioner, hence, issue notice to Respondents. Humdast permitted. In addition to Court's notice Petitioner is directed to serve Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or

before the next date. After receiving notice, Respondents to file affidavit-in-reply, if any, on or before next date.

*5. Stand over to **6th February, 2023**. In the meanwhile, the proceedings before the learned Trial Court shall be deferred until further orders.”*

3. Today when the matter is called out, despite having been served none appears for the Respondents. Name of some Advocate representing the Advocate appears on the Board today. The Advocate is not present when the matter is called out.

4. It is seen that Application filed below Exhibit-47 is filed by Plaintiff in the first instance itself for inclusion of the subject two properties rather family properties as described and situated in Gat No. 243 and 253 which were disclosed by the Defendants in their Written Statement. Considering the fact that suit proceeding between parties is for partition, admittedly the nature of suit or its character will not change on inclusion of the aforementioned two additional properties for effecting partition.

5. Undoubtedly both the parties to the suit properties shall be at liberty to lead appropriate evidence in witness action in respect of their right, entitlement and interest in all suit properties which are the subject matter of the suit. Merely rejecting the application of the Plaintiff on the ground of due diligence cannot be used to oust the two substantive properties enuring to the benefit of all parties in a suit for partition. Such an amendment rather deserves to be allowed

and enures to the benefit of both parties.

6. This is a case where Defendants' own case in their Written Statement is that two out of the several suit properties were admittedly left out from the array of properties for seeking partition. Once these properties were brought to the notice of the Court, the learned Trial Court in the suit for partition of ancestral properties between the parties should have included them in the array of suit properties.

7. One of the principal ground which weighed with the Trial Court for rejecting the Application for inclusion of these two properties is that issues were already framed on 30.12.2019 and Plaintiff had filed his Affidavit-in-lieu of examination-in-chief on 01.02.2020 whereas Application for including the two properties as suit properties was filed on 25.02.2020. This however cannot be a ground to reject the Application though there is a little delay.

8. Today the stage of proceedings is that the suit stands stayed. Substantial valuable time has already been lost from 2020 onwards. Needless to state that major part of the said time was lost due to COVID-19 Pandemic.

9. It is seen that if all suit properties are not included in the list of properties for effecting partition it may subsequently lead to multifarious suit proceedings between the same parties which should

be avoided. In that view of the matter, findings and reasons returned in paragraph No.24 of the impugned order are clearly not sustainable.

10. Assuming for the sake of argument that the Plaintiff had suppressed this material information from the Trial Court at the time of filing the suit plaint, then once this information is brought before the Trial Court, it is the duty of Trial Court to include these two properties for effecting complete partition rather than exclude them by dismissing the Application filed by the Plaintiff.

11. In view of the above, reasons returned by the learned Trial Court in paragraph Nos.24 and 25 of the impugned order are not sustainable. Order dated 11.10.2021 is therefore quashed and set aside. Application filed under Exhibit-47 in Regular Civil Suit No.192 of 2015 stands allowed. Amendment is permitted to be carried out within a period of two weeks from today.

12. Learned Trial Court is directed to allow the Plaintiff to carry out the amendment. Amended suit plaint shall be served on Defendants. Defendants are directed to file additional Written Statement only to the extent of the amended plaint. Such additional Written Statement shall be filed within a period of four weeks from the date of service of the amended suit plaint on Defendants.

13. Learned Trial Court shall proceed with hearing and disposal of Regular Civil Suit No.192 of 2015 as expeditiously as possible and

strictly in accordance with law by framing any additional issue / recasting of issue and dispose of the suit proceeding within a period of eight months from today. Parties to act on an authenticated copy of this order.

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

H. H. SAWANT

[MILIND N. JADHAV, J.]

Digitally
signed by
HARSHADA
HANUMANT
SAWANT
Date:
2024.01.29
20:10:34
+0530