

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1339 OF 2019

Immacus Dias & Anr.

.. Petitioners

Versus

Irene Monica Miranda & Ors.

.. Respondents

.....

- Mr. Clifford Martis for Petitioners
- Mr. Anuj N. Narula (through VC) a/w Ms. Mehek Choudhary i/by Jhangiani, Narula & Associates for Respondent No. 3

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 22, 2024

P. C.:

1. Heard Mr. Martis, learned Advocate for Petitioners and Mr. Narula (through VC) for Respondent No. 3.
2. I had heard the parties on 05.02.2024 and passed the following order:-

“1. Heard Mr. Martis, learned Advocate for Petitioners and Mr. Narula, learned Advocate for Respondents.

2. I find that by the impugned order Application below Order VI Rule 17 of the Code of Civil Procedure, 1908 filed by the Plaintiff's successors-in-title is rejected. Schedule of amendment is at page No.42 of the Writ Petition. The real bone of contention in allowing the said amendment which was opposed to by Mr. Narula is the averment made in paragraph No.6(d) which is a contradiction with the averments in the Suit plaint and reads thus:-

“(d) The original deceased Plaintiff and the late Mrs. Stella D'Souza never executed the said two release deeds.....”

3. Mr. Narula would submit that even in so far as the proposed averments in paragraph Nos.6(a), (b) and (c) are concerned, he would have some reservation. He is therefore directed to file his Affidavit-in-Reply within a period of one week from today. Copy of Affidavit-in-Reply shall be served on Mr. Martis in advance.

4. *It is clarified that, the present Writ Petition shall be heard finally at the stage of admission on the next adjourned date.*

5. *In the meanwhile, learned Trial Court is directed by this Court to defer the hearing of the Suit proceedings for a further period of two weeks from today to enable this Court to decide the present Petition.*

6. *Stand over to 12th February, 2024 at 02:30 p.m.”*

3. The only bone of contention which was argued vehemently between the parties was with respect to the status and knowledge of the execution of the two Release Deeds. It is an admitted position that both the Release Deeds are mentioned in the suit plaint and the effect of the status of execution or the knowledge gained of the Release Deeds has been effectively replied to and answered in the written statement. In that view of the matter, this Court felt that in so far as the amendment contained in paragraph Nos. 6(a) to 6(d) was concerned, it was nothing but an interpretation of the Plaintiffs' knowledge relating to execution, knowledge and status of the two Release Deeds and nothing more. In fact, Mr. Narula after going through the entire amendment conceded that the factual amendments could be allowed but a strong objection was raised by him with respect to averments made in proposed paragraph No. 6(d). After hearing Mr. Narula, this Court in fact noted the said objection in paragraph No. 2 of the previous order.

4. A specific direction was given for filing affidavit-in-reply. Pursuant thereto, affidavit-in-reply dated 09.02.2024 is filed and tendered across the bar by Respondent No. 3 and it is taken on record.

Perusal of the said affidavit-in-reply clearly reveals one thing and that is the Plaintiffs cannot be allowed to improve and interpret their submissions and pleadings made in the suit plaint by the proposed amendment ten years later so as to interpret the case of Plaintiffs after the same has been adequately replied to by the Defendants in their written statement. This would amount to Plaintiffs giving a rejoinder to the Defendant's case in their rejoinder. However, in that view of the matter, the proposed amendment in paragraph Nos. 6(a) to 6(d) cannot be permitted by the Court. However, both the learned Advocates are *ad idem* that the suit is at the stage of marking of documents and witness action has not yet begun. Mr. Martis would submit that Plaintiffs would be leading evidence of 5 witnesses. Be that as it may, considering the fact there is adequate reference and mention to the two Release Deeds in the pleadings through which rights have flowed to the parties, Plaintiffs cannot be precluded or shut out from referring to them or relying upon them as to its interpretation as desired by the Plaintiffs, but that can only be allowed in evidence and not by way of trying to improve the pleadings. In that view of the matter, I do not find any reason to interfere with the order dated 19.03.2018 passed by the learned Trial Court, however reserving the right of the Plaintiffs to refer to and rely upon the said two Release Deeds in evidence strictly in accordance with law. All

contentions of both parties are expressly kept open. The order dated 19.03.2018 is sustained but with clarification given in this order.

5. It is clarified that the observations made in this order as also by the learned Trial Court in its order dated 19.03.2018 are *prima facie* in nature and therefore those observations shall not influence the trial. It is clarified that in the event if Plaintiffs refer to and rely upon the two Release Deeds in accordance with their pleadings, learned Trial Court shall allow them to refer to and rely upon the same, but strictly within the parameters of the Indian Evidence Act.

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

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA
MOHAN
AMBERKAR

Digitally
signed by
RAVINDRA
MOHAN
AMBERKAR
Date:
2024.02.22
18:37:30
+0530