



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

19 WRIT PETITION NO. 5968 OF 2016

Shantabai Devidasrao Joshi
Age : 73 years, Occu : Agri,
R/o Chikhali, Tq. Kandhar,
At Present C/o Shashikant Devidasrao
Joshi, Bank Colony, Near Waman
Nagar, Nanded, Tq. Dist. Nanded

.... **Petitioner**
(Ori. Defendant)

Versus

Baburao Ramdeo Joshi
Age : 69 years, Occu : Agri,
R/o Chikhali, Tq. Kandhar,
Dist. Nanded

.... **Respondent**
(Ori. Plaintiff)

...

Advocate for the Petitioner : Mr. B. S. Kudale
Advocate for Respondent : Mr. H. I. Pathan

...

CORAM : MANJUSHA DESHPANDE, J.

Dated : March 17, 2025

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.
2. The petitioner is challenging the order dated 06.04.2016, passed below Exh. 107 in Regular Civil Suit No. 40 of 2003 by Jt.

Civil Judge Junior Division, Kandhar (hereinafter “Trial Court”). The present petitioner is the original defendants in the suit whereas the present respondent is the original plaintiff.

3. Respondent herein has filed civil suit for declaration and injunction against the petitioner. The petitioner has filed her written statement cum counter-claim at Exh. 30 challenging the contentions raised by the respondent. On the basis of rival pleadings of the parties, Issues were framed at Exh. 40.

4. Thereafter, the petitioner has filed an application at Exh. 107 under Order VI Rule 16 and 17 read with Section 151 of Code of Civil Procedure. It was the contention of the petitioner that para No. 6 of the written statement is unnecessary since it contains the details about the Special Civil Suit No. 9/1983 which is in no way concerned with the present proceeding. Inadvertently, the details about Special Civil Suit No. 9/1983 have been incorporated in the said paragraph. Therefore, it is necessary to delete the averments made in the said paragraph.

5. Even, the additional contents mentioned in the same para (C) are also regarding the Special Civil Suit No. 9 of 1983 and Regular Civil Appeal No. 211 of 1986. The contents of both the

proceedings has not relate to the litigation between the parties. There is compromise arrived at between the parties in Special Civil Suit No. 9 of 1983 and Regular Civil Appeal No. 211 of 1986. The parties to present suit are different and not concerned with the earlier suit. Therefore, it is necessary to strike off the contents of written statement.

6. It is the contention of the learned Advocate for the petitioner that while filing the written statement, certain averments have been made which are unnecessary for decision of the present suit. Therefore, it needs to be struck off. It is further contention of the petitioner that due to the averments made in the para No. 6, additional Issue No. 4 has been framed which reads thus :

“Does plaintiff prove that she is in possession over suit land as per compromise taken place in between plaintiff and defendant in appeal No. 211 of 1986 ?”

7. It is submitted that the above issue does not pertain to the real dispute between the parties. Therefore, petitioner seeks liberty to delete the above mentioned portion from the written statement and substitute it with an averment that “The contents of the para No. 6 in the plaint are false and are not admitted to the respondents”. On this background, the application (Exh. 107) was

filed by the defendant seeking permission to strike off the para No. 6 and Clause 'C' from the written statement.

8. It is the contention of the learned Advocate for the petitioner that since the parties to the present suit were different and the parties in Special Civil Suit No. 9 of 1983 which was compromised between the parties were different. The necessary amendment as prayed by the petitioner should have been allowed by the Trial Court. The Trial Court has failed to exercise its jurisdiction in accordance with Order VI Rule 16 and 17 of CPC. Therefore, interference by this Court is necessary.

9. It is further contention of the learned Advocate for the petitioner that parties to the suit as well as compromise which was arrived at between the parties were different from the parties in the present suit. Therefore, it is necessary to exercise the jurisdiction. Learned Advocate for the petitioner relies on the judgment of Hon'ble Supreme Court in case of **Abdul Razak (dead) through L.Rs. And Ors. Vs, Mangesh Rajaram Wagle and Ors. [2010(3) Mh. L. J. 6]**. Learned Advocate specifically relied on paragraphs No. 19 and 20 of the said judgment, which reads thus :

19. In this case, the learned trial Court did make a reference to the provisions of Order VI Rule 16 and held

that the application made by the plaintiffs (respondent Nos. 1 and 2 herein) does not fall in either clauses of Rule 16. The learned Single Judge of the High Court did not even bother to notice Order VI Rule 16 what to say of considering its applicability to the pleadings contained in the additional written statement and granted the prayer of respondent Nos. 1 and 2 by assuming that the plea raised by the appellants was inconsistent with the defence set up by their predecessor-in-interest. In our opinion, the learned Single Judge did not have the jurisdiction to direct striking off the additional written statement without being satisfied that respondent Nos. 1 and 2 were able to make out a case for exercise of power by the court under either of three clauses of [Order VI Rule 16 CPC](#).

Re: (iii) :

20. *Although, from the record produced before this Court it is not clear whether respondent Nos. 1 and 2 had filed writ petition under [Article 226](#) of the Constitution of India or they had invoked supervisory jurisdiction of the High Court under [Article 227](#) of the Constitution, but a reading of the impugned order does not leave any manner of doubt that while granting relief to respondent Nos. 1 and 2, the learned Single Judge did not keep in mind the guiding principles laid down by this Court for exercise of power under [Articles 226](#) or 227 of the Constitution. It seems to us that the learned Single Judge decided the matter by assuming that he was hearing an appeal against the order of the trial Court. If this was not so, the learned Single Judge was duty bound to first consider whether he was called upon to exercise power under [Article 226](#) of the Constitution of India or under [Article 227](#) thereof. If respondent Nos. 1 and 2 had invoked the High Court's jurisdiction under [Article 226](#), then the learned Single Judge ought to have considered whether the trial Court committed a jurisdictional error by refusing to strike off the additional*

written statement filed by the appellants or it was a case of failure on the part of the trial Court to exercise the power vested in it under [Order VI Rule 16 CPC](#) or the order under challenge was vitiated by an error of law apparent on the face of the record or there was violation of the rules of natural justice. In either case, the learned Single Judge was also required to consider whether there has been substantial failure of justice or manifest injustice has been caused to respondent Nos. 1 and 2 on account of the trial Court's refusal to strike off the additional written statement. These are the parameters laid down by this Court in [Syed Yakoob v. K.S. Radhakrishnan](#) AIR 1964 SC 477. If the petition filed by respondent Nos. 1 and 2 was under [Article 227](#) of the Constitution of India, then the learned Single Judge should have taken note of the often quoted judgment in [Surya Dev Rai v. Ram Chander Rai](#) (2003) 6 SCC 675, in which a two-Judge Bench, after threadbare analysis of [Articles 226](#) or [227](#) of the Constitution and considering large number of judicial precedents on the subject, recorded the following conclusions:

"(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in [Section 115](#) of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under [Articles 226](#) and [227](#) of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by [CPC Amendment Act](#) 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under [Article 226](#) of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a

subordinate court is found to have acted (i) without jurisdiction -- by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction -- by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under [Article 227](#) of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the

abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

10. Per contra, learned Advocate Mr. Pathan appearing for the respondent submits that the Judge of the Trial Court has rightly passed the order rejecting the application. It is his contention that the application is filed at belated stage i.e. after recording the evidence of present petitioner. The petitioner has filed present application as an afterthought, after the suit has reached an advanced stage. He further contends that an additional issue is also framed on the basis of pleadings of the parties, more particularly, on the basis of the pleadings of the defendants in para No. 6. In order to prove the additional issue, witnesses are also examined. Therefore, on the aforementioned background, the order passed by the Judge of the Trial Court does not deserve any interference.

11. Learned Advocate for the respondent relies on the order dated 18.11.2015 passed by this Court in **Writ Petition No. 8993 of 2014 (Poonamchand Jangly Gawli and Ors. Vs. Dasrao Uttamrao Hambarde and Ors.)** wherein this Court has refused to interfere with the order of the Trial Court wherein the Trial Court has rejected the application for amendment in written statement which is made at belated stage.

12. I have heard respective parties. While passing the impugned order, the Judge of the Trial Court has referred to the

averments made in the application. Defendant has stated that the written statement is prepared in English and she is not conversant with English. The Advocate engaged on her behalf has prepared the written statement in a hurry. Due to which certain unnecessary averments, not connected to the present matter are made in the written statement, which are required to be deleted.

13. The Judge of the Trial Court has recorded that the property which is mentioned in the present suit i.e. R.C.S. No 40 of 2003 and the property mentioned in Spcl. C. S. No. 9 of 1983 is one and the same. There is no substance in the application filed by the defendant that subject matter between the parties in R.C.S. No. 9 of 1983 and R.C.S. No. 40 of 2003 is different.

14. It is further observed by the Trial Court that the defendant was served with suit summons on 02.11.2003 and she appeared on 03.11.2003. Thereafter, she availed 7 dates in order to file written statement and on 12.08.2004, she has filed written statement cum counter-claim. Therefore, there is no substance in the contention raised by the present petitioner that the written statement was filed hurriedly. Trial Court has rightly observed that the amendment sought by the defendant is not only necessary for determining the controversy between the parties but it is very much

relevant and necessary for the decision in the pending suit since the suit property in the pending suit appears to be same as mentioned in R.C.S. No. 9 of 1983 and R.C.S. No. 40 of 2003. It is, therefore, observed that all the record produced by the defendant shows that the fact mentioned in the para No. 6 and other additional facts in written statement cum counter-claim are relevant for the decision of the present suit.

15. It is further observed that the suit is pending for the final arguments and trial has already commenced. Therefore, it was necessary for the defendants to give specific reason that despite the due diligence, this issue could not be raised before the commencement of the trial. Considering the conspectus of the matter, the Trial Court has rejected the application seeking amendment.

16. Order VI Rule 16 and 17 of CPC reads thus :

16. Striking out pleadings.— The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading -

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.]

17. Amendment of pleadings.— The Court may at any stage of the proceedings allow either party to alter or amend his

pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

17. The petitioner who is defendant in the suit has filed written statement cum counter-claim, therefore, Order VI Rule 16 and 17 will be applicable. Proviso to Rule 17, imposes restriction on amendment of pleadings after the trial commences. Considering the stage of the suit which was pending for final arguments, it was necessary for the applicant / defendant to demonstrate that despite due diligence, the issue could not be raised by her before the commencement of the trial. Therefore, the Judge of the Trial Court has rightly refused to entertain the application filed by the defendant.

18. Similarly, considering that the property mentioned in the Spcl. C. S. No. 9 of 1983 i.e. agricultural land in Sy. No. 66 area ad-measuring 6H – 72R at village Chikhali, Tq. Kandhar, Dist. Nanded is the same property which is subject matter in present suit and the present petitioner is claiming the possession on the basis of the compromise that was arrived at in the earlier suit, the application

seeking striking out pleadings did not deserve to be entertained.

19. In view of the above, I do not find that the Judge of the Trial Court has erred in refusing to strike off the contents of para No. 6 wherein the details of the property in the earlier suit have been incorporated. More so, in view of the fact that on the basis of the pleadings of the parties, the additional issue has already been framed by the Trial Court, and on the basis of the additional issue, evidence is also led by the parties. Therefore, after framing of issues and examining the witnesses, application for amendment seeking striking off averments made in the written statement could not have been allowed which has been rightly rejected by the Trial Court. Considering the stage of the suit, the Trial Court has rightly refused to entertain the application.

20. In view of the conspectus of the matter, I do not find that there is case made out by the petitioner for interference in the impugned order. Hence, writ petition stands dismissed. Rule is discharged.

(MANJUSHA DESHPANDE, J.)

Omkar Joshi