



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12518 OF 2024

Sajid Mohammad Inamdar
VERSUS
Noorjaha Amin Shaikh And Others

WITH
WRIT PETITION NO. 12549 OF 2024

Najir Bhikan Shaikh And Another
VERSUS
Noorjaha Amin Shaikh And Others

- Mr. V. R. Dhorde, Advocate for the Petitioners
- Mr. B. A. Shinde, AGP for the Respondent No.7/State

CORAM : R.M. JOSHI, J
DATE : JANUARY 07, 2025

COMMON ORDER :

1. These Petitions are filed by the Appellant (Original Defendant No. 3) in RCA No. 96/2023 and Respondents in the said Appeal (Original Defendant Nos. 1 and 2) taking exception to the common order passed below Exh. 49 and 65 seeking amendment to the written statement.

2. Parties are referred to by their nomenclature in the original proceedings.

3. The facts which led to the filing of this

Petition can be narrated, in brief, as under:

Plaintiff claim herself to be cousin sister of the Defendant Nos. 1 and 2 and seeks right in the suit property. She has filed suit for seeking declaration that the decree obtained by Defendant Nos. 1 and 2 in RCS No. 367/2010 is collusive and not binding on her. She has further sought declaration that sale deed dated 26.12.2014 executed by Defendant No. 2 in favour of Defendant No. 3 to be not binding on her. A relief of injunction is also sought against them. Defendant Nos. 1 and 2 filed written statement at Exh. 19. In the said written statement they vaguely disputed the relationship, however, it is not specifically stated that Plaintiff is their real sister. Defendant No. 3 also filed written statement at Exh. 29 opposing the suit. The evidence was led by Plaintiff and Defendant No. 3. Defendant Nos. 1 and 2 have not stepped into witness box before the learned Trial Court. Learned Trial Court decreed the said suit by judgment and decree dated 06.05.2023 in RCS No. 15/2018.

4. Being aggrieved by the said decree, Defendant No. 3 filed RCA No. 96/2023. Before the First Appellate

Court Defendant No. 3 filed Exh. 49 whereas Defendant Nos. 1 and 2 filed Exh. 65 for seeking amendment to their written statement. It is sought to be contended by the Defendant No. 3 in his application that at the time of filing of the Appeal Defendant Nos. 1 and 2 disclosing him about Plaintiff being their real sister. The Defendant Nos. 1 and 2 in their application vide Exh. 65 claims that they did instruct their lawyer to mention in the written statement that Plaintiff is their real sister, however, since it was not so mentioned, amendment to the written statement is sought.

5. Learned Counsel for the Petitioners submits that Petitioner i.e., Defendant No. 3 is a bona fide purchaser of the suit property and by passing of the judgment and decree by the learned Trial Court on wrong premise that Plaintiff is cousin sister of Defendant Nos. 1 and 2 has caused miscarriage of justice. As far as Defendant Nos. 1 and 2 are concerned, it is submission of their Advocate that they had filed affidavit before the First Appellate Court stating on oath that Plaintiff is their real sister and that the

Advocate was so instructed to mention accordingly in the written statement. It is his submission that if the amendment is allowed and it is held that Plaintiff is real sister of Defendant Nos. 1 and 2, she would not be entitled for any relief.

6. There is no dispute about the fact that RCS No. 15/2018 was duly contested by the Defendants. Defendant Nos. 1 and 2 filed written statement wherein there is no specific plea raised with regard to the relationship between them and Plaintiff and Defendant Nos. 1 and 2 to be a real sister and brothers. Though there is a written statement filed by Defendant No. 3 however no pleadings are raised in this regard. The Trial Court framed issues. Parties led evidence except Defendant Nos. 1 and 2. Even during evidence it was not suggested to any witness that Plaintiff is sister of Defendant Nos. 1 and 2. The suit came to be decreed.

7. Now, question arises as to whether at the stage of first appeal it is permissible for the parties to change their stand taken before the Trial Court, on the basis of which decree came to be passed. For the purpose of allowing any amendment to the pleadings, to

clear the test of proviso to Order VI, Rule 17 is mandatory.

8. In this regard, it would be relevant to take note of proviso of Order VI, Rule 17, which reads thus:

“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.”

Proviso to Order VI, Rule 17 of Code of Civil Procedure permits in exceptional case for permitting amendment to the written statement after commencement of trial and which no doubt can also be done even during the pendency of the Appeal, as the Appeal is continuation of the suit. However, for that purpose, due diligence must be shown by party and it needs to be justified as to the matter sought to be amended was not within knowledge or in spite of due diligence, it could not be raised before Court. In the instant case, admittedly there is no subsequent event which has occurred requiring invocation of the said proviso liberally. Pertinently, this is not the case wherein

the Defendants are unknown to the Plaintiff. Defendant Nos. 1 and 2 are close relatives of the Plaintiffs and if they did not state in their written statement about Plaintiff being their real sister, this amounts to nothing but latches on their part and now it is not permissible for them to claim so.

9. Moreover, on the face of the vague statement that they instructed their lawyer to state so accordingly in the written statement, cannot be permitted to become a ground for allowing the amendment to the written statement. It is necessary to take note of the fact that on the basis of such loose ground the written statements are allowed to be amended at any stage of proceedings and thereby decree passed by the Court after conducting entire trial are permitted to be reversed, only injustice would perpetuate. Unscrupulous litigants would take disadvantage of the same to deny fruits of decree to other side and hence, this Court finds absolutely no reason or justification to cause any interference in the impugned orders. Moreover, it is not the case of Defendant No. 3 that the Defendant Nos. 1 and 2 were in collusion with Plaintiff for

permitting her to obtain decree in her favour.

10. Perusal of the impugned orders indicate that the learned First Appellate Court has rightly taken into consideration the facts involved in the case and findings recorded by the First Appellate Court while rejecting Applications Exh. 49 and 65, cannot be termed as perverse, in order to cause interference therein in exercise of writ jurisdiction.

11. In the result, Petitions stand dismissed. Pending application(s), if any, stands disposed of.

(R.M. JOSHI, J.)