



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

936 WRIT PETITION NO. 1001 OF 2024

KESHAV MADANLAL KHANDELWAL ALIAS SHARMA
VERSUS
BADRINARAYAN RAMJEEVAN KHANDELWAL ALIAS SHARMA
DECEASED SURESH BADRINARAYN KHANDELWAL SHARMA

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Advocate for Petitioner : Mrs. Anjali Dube
Advocate for Respondent : Ms. Rashmi C. Bhende
h/f. Mr. K.C. Khanapure

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CORAM : ROHIT W. JOSHI, J.

DATE : 15th JULY, 2025

P.C.:

1. The present petitioner is the original defendant. One Badrinarayan Ramjeevan Khandelwal had filed a Civil Suit being RCS No. 259/2013, *inter alia*, claiming a decree for possession with respect to the suit property. The plaintiff Badrinarayan expired while the suit was pending. The respondent Suresh continued the suit as legal representative of deceased / plaintiff claiming to be adopted son of the plaintiff / Badrinarayan. Apart from this, he also claimed that Badrinarayan had executed a will in his favour on 15.04.2013.

2. The plaint was initially amended to incorporate paragraph nos. 3a to 3d in the plaint, wherein pleadings with respect to the alleged will were incorporated. However, the amendment does not state that Badrinarayan had executed the will in a sound disposing state of mind and that he was physically fit while executing the will. After the plaint was amended, the petitioner / original defendant also amended the written statement and raised several aspects questioning the

veracity of the will including the physical and mental condition of deceased Badrinarayan. The respondent/plaintiff filed his affidavit of examination-in-chief of 22.10.2018. It appears that he was not diligent in prosecuting the suit and did not turn up for facing cross-examination. In view of the aforesaid, the learned Trial Court was constrained to pass an order dated 11.02.2020, posting the matter for passing order of dismissal of suit for want of prosecution. However, the suit remained pending on the file. In these circumstances, on 18.11.2022, the respondent / plaintiff filed an application for amendment of plaint vide exhibit 59.

3. By way of this application for amendment, the plaintiff stated that Badrinarayan had executed the will on 15.04.2013, in a sound disposing state of mind when he was physically fit to do so. It is stated that the will is notarized and that it was signed by two attesting witnesses. The petitioner / original defendant opposed the application for amendment predominantly placing reliance on the conduct of the respondent / plaintiff in prosecuting the suit. The learned Trial Court has allowed the application for amendment vide impugned order dated 17.03.2023. The learned Trial Court has stated that the amendment is clarificatory in nature in as much as the pleadings with respect to the will were already existing in the plaint and that no prejudice was likely to be caused to the defendant/ petitioner by allowing the application. Having regard to the conduct to the plaintiff, the learned Trial Court has imposed costs of Rs. 700/- (Rupees seven hundred).

4. Learned counsel for the petitioner contends that the learned trial Court has committed a serious error of law in allowing the application for amendment after commencement of trial. She contends that the plaintiff has failed to make out any case of due diligence which is necessary to be made out in view of proviso to Order VI Rule 17 of

CPC. As regards the delay, learned Advocate contends that the affidavit of examination-in-chief was filed on 22.10.2018, resulting in commencement of trial and the application for amendment is filed after a period of more than four years on 18.11.2022, that too when the suit was once posted for passing order of dismissal of the suit in default.

5. Per contra, learned Advocate for the respondent/plaintiff supports the order. She contends that the discretion exercised by the learned trial Court in allowing the application for amendment should not be interfered with. Her contention is that the pleadings sought to be incorporated by way of amendment are only clarificatory in nature and therefore, no prejudice will be caused to the petitioner, if the amendment is allowed.

6. Having heard the rival submissions and having perused the record with the able assistance of the learned Advocates, it is seen that the respondent has not satisfied the parameters of proviso to Order VI Rule 17 of the C.P.C. At the same time, it also needs to be stated that the amendment is certainly clarificatory in nature and elaboration of facts that are already existing in the plaint. It does not appear from reading of the amended portion of the plaint that any prejudice will be caused to the defendant/petitioner, if amendment is allowed.

7. In view of the aforesaid this Court does not deem it appropriate to interfere with the discretion exercised by the learned trial Court while allowing the application of amendment.

8. However, it must also be stated that the affidavit of examination-in-chief is filed in October 2018. Thereafter, the plaintiff/respondent did not turn up for facing the cross-examination. The trial Court had, therefore, passed an order dated 11.02.2020, posting the matter for passing order to dismiss the suit in default on the next date. A period of around 14 months had passed between the date

on which affidavit of examination-in-chief was filed and the said order dated 11.02.2020, was passed. Thereafter for some of the other reason, the suit remained pending and the application for amendment came to be filed on 18.11.2022, i.e. after a period of around two years and nine months from 11.02.2020. There is a gap of four years and one month in between the date of filing of affidavit and date of filing application for amendment. The conduct of the plaintiff can be seen on the face of record. It appears that the plaintiff was deliberately causing delay in the matter.

9. Having regard to such conduct on the part of the respondent/plaintiff, I find that the submission made by the learned Advocate for the petitioner that costs of Rs. 700/- (Rupees seven hundred) imposed by the learned trial Court is very meager. In order to balance the equities and in the interest of justice, it will be appropriate that costs of Rs. 15,000/- (Rupees fifteen thousand) be awarded.

10. In view of the aforesaid the petition is partly allowed. The order allowing the application for amendment of plaint is maintained, subject to payment of costs of Rs. 15,000/- (Rupees fifteen thousand) to be paid by the respondent/plaintiff to the petitioner/defendant on or before 15.08.2025.

[ROHIT W. JOSHI J.]