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Court : Mumbai Nagpur

Decided On : Jun-25-2014

Judge : A.P. Bhangale

Appeal No. : Writ Petition No. 1068 of 2014

Appellant : Shantabai

Respondent : Vasant and Others

Judgement :

Oral Judgment:

1. Rule returnable forthwith. Heard finally by consent.
2. Considered the nature of the impugned order passed by the learned Civil Judge (Sr.Dn.), Amravati in Regular Civil Suit No.98 of 2008 whereby the application for amendment of the plaint preferred under Order VI, Rule 17 of the Code of Civil Procedure was rejected. The said suit was a suit for declaration, permanent injunction, partition and separate possession of the suit property filed by the writ petitioner (Original plaintiff) against her two step brothers. According to the plaintiff, she claimed declaration in respect of her 1/3rd share in the ancestral property. Her father Shamrao died in or about the year 1991. Shamrao had married twice during his life time. From the first wife, the petitioner was born out of the wedlock; while from the second wife, sons Vasanta and Ramesh were born. Thus, the writ petitioner is the elder daughter. However, it is alleged that her rights

were suppressed by her step brothers Vasant and Ramesh and foul play was played by them so that she should not receive any share in the ancestral property, though she is entitled to claim it according to law.

According to the petitioner, despite due diligence, some material facts, which are of explanatory nature to assist the trial Court to resolve the controversy between the parties, were not brought to the notice of the plaintiff because of her application under the Right to Information Act and therefore, by the time of decision on the application for amendment of the plaint, her evidence in examination-in-chief was recorded in the trial Court as also her cross-examination and case was fixed for cross-examination of DW-1 as, according to 1st defendant, he had filed affidavit of evidence. The learned trial Judge thought that the proviso to Order VI, Rule 17 of the Code of Civil Procedure would bar the application and therefore, decided to reject it by refusing to exercise discretion to grant amendment in favour of the plaintiff. The learned trial Judge thought that application for amendment should not be allowed after commencement of trial in view of proviso to Order VI, Rule 17 of the Code of Civil Procedure.

3. I have considered the reasons stated in the impugned order. In the facts and circumstances, it appears that the plaintiff had obtained information in respect of family history and she wanted to inform the trial Court about the material facts which could have bearing on the final decision as it may assist the trial Court to resolve the real controversy between the parties finally. The contention on behalf of the writ petitioner that her name was suppressed earlier by her two step brothers and they were blamed for playing foul play. I think that, in such a case, in the larger interest of justice, the trial Court may seek assistance when the parties are ready and willing to disclose entire facts which may come to their knowledge subsequently so that the larger interest of justice may be served instead of technically rejecting the application for amendment of the plaint.

In such cases, to my mind, when the application for amendment is filed at a belated stage, the trial Judge can impose just and appropriate costs so as to adequately compensate the other party who has grievance due to belated amendment in the plaint. Since in this case the evidence of the defendant is not

yet complete and the case is still at the stage of his cross-examination, I feel that the ends of justice would be served if the plaintiff is allowed to amend the plaint, as prayed, by introducing para 2-A in the plaint and thereafter, she shall furnish copy of the amended plaint to the defendant forthwith so as to give opportunity to the defendants to meet the contentions on merits of the suit by their additional Written Statement, if any. The trial Court may give further opportunity to the plaintiff to prove additional facts stated in the amended plaint and also offer opportunity to the defendants to cross-examine the plaintiff in respect of the material facts introduced latter in the course of the suit and then shall proceed further in the trial to record evidence on the defendants' side and decide the suit on merits according to law.

4. For all the reasons afore-mentioned, therefore, the impugned order is set aside. Rule is made absolute in terms of prayer clauses (b) and (c) of the petition subject to payment of cost in the sum of Rs.2,000/- as a condition precedent for amendment of the plaint payable by the plaintiff to the defendants.

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