

(2014) 04 BOM CK 0095

In the Bombay High Court

Case No : Writ Petition No. 4006 of 2013

Dnyandev Ramlal Patil

APPELLANT

Vs

Sanjeev Bhavlal Patil and Others

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2014) 6 ALLMR 657 : (2014) 6 MhLj 400

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : Dheple Shantaram R, Advocate for the Appellant; Patil M.M. (Beedkar), Advocate for Respondents 1 to 3, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.—Heard learned Advocates for the respective parties at length.

2. The petitioner/original plaintiff, has filed RCS No. 54 of 2006 on 27.4.2006, for seeking declaration and cancellation of will deeds dated 20.4.2001 and 16.11.2002.

3. It has been specifically contended in paragraph No. 7 of the said suit plaint that the petitioner is in possession of the property, which is alleged to have been passed over to the respondents/defendants by virtue of the will deeds dated 20.4.2001 and 16.11.2002.

4. In the said paragraph No. 7, the petitioner has expressed a serious apprehension about the threat to his possession. Nevertheless, the suit was restricted only to seeking declaration and cancellation of the will deeds dated 20.4.2001 and 16.11.2002.

5. The petitioner submits that since the respondents have forcibly dispossessed him on 20.6.2012, he preferred an application for amendment under Order VI

Rule 17 of the Code of Civil Procedure, 1908 ("CPC") on 20.3.2013. By the said application, the alleged subsequent event of forcible dispossession of the petitioner is sought to be brought on record. The proposed amendment was set out in paragraph No. 2(A) of the application for amendment, whereby, it was sought to be averred that the forcible dispossession at the hands of respondents 1, 2 and 4 be subjected to the adjudication in the said suit.

6. By the impugned order dated 3.4.2013, the learned Joint Civil Judge J.D. Jamner, was pleased to reject the said application for amendment (Exhibit 82) with costs of Rs. 1,000/-. The petitioner, being aggrieved by the said order, has preferred this Writ Petition.

7. The petitioner contends that neither would the nature of the cause of action be altered by the proposed amendment nor would any irreparable harm, serious prejudice or manifest inconvenience be caused to the respondents by the said amendment.

8. The petitioner has relied upon the judgment of this Court in the matter of Dela Gurudal Vanjari Vs. Uddhal Govardhan Rathod, . Placing reliance on the said judgment, the petitioner buttresses his submission that to avoid multiplicity of litigation, as is observed by this Court in paragraph No. 14 of the said judgment, the plaintiff/petitioner, who is an agriculturist, be allowed to amend the plaint as he hails from a rural area and is not conversant with the procedural intricacies.

9. The petitioner has also relied upon the judgment of this Court in the case of Shakuntala Balsaraf, Since deceased through her Legal Heirs, (Balasaheb Balsaraf and Others) Vs. Ramdas Balsaraf, Nandu Gaikwad, Suresh Gaikwad and Dnyaneshwar Balsaraf, . This Court, in the said case has noted the facts in paragraph No. 3 and has finally concluded in paragraph No. 10 as regards the reasons why the plaintiff should be allowed to amend the plaint.

10. The learned Advocate for the petitioner, therefore, submits that the impugned order deserves to be quashed and set aside and the petitioner be allowed to amend the plaint in order to avoid multiplicity of litigation.

11. Shri M.M. Patil, learned Advocate for the respondents has placed certain facts before this Court. It is pointed out that the written statement of the defendants/respondents herein, was filed on 9.10.2006. In paragraph No. 12(A) of the written statement, it was categorically contended that deceased Ramlal was the real uncle of the defendants and used to stay with the parents of the defendants. The death of Ramlal took place in the residence of the defendants. Deceased Ramlal was suffering from Leprosy and was, therefore, attended to, cared for and nourished by defendants 1, 2 and 4. The property mentioned in the suit filed by the petitioner was, continuously in possession of respondents 1, 2 and 4 and that they were cultivating the same.

12. It was, therefore, stated that even at the time of filing of the suit by the plaintiff/petitioner, the property was in possession of the defendants and was not

in possession of the plaintiff. Shri Patil, therefore, contends that the petitioner could have amended his plaint after receiving the written statement, which is filed on 9.10.2006. He did not choose to file any such amendment then.

13. Shri Patil, learned Advocate has then submitted that 7/12 extracts clearly indicate that the defendants were cultivating the land for a long time. The documents shown to the Court, in the presence of the learned Advocate for the petitioner, across the Bar, indicate that defendants 1, 2 and 4 are cultivating the land from the year 2004 onwards. The suit is filed in 2006.

14. It is further submitted that the petitioner has contended that the alleged dispossession had taken place on 20.6.2012. The petitioner, who stepped into the witness box, was also allowed an additional examination-in-chief on 24.7.2012, which is practically five weeks after the alleged dispossession on 20.6.2012. Yet, the petitioner/plaintiff has not even whispered in the additional examination-in-chief that he was dispossessed on 20.6.2012.

15. Thereafter, he was subjected to cross-examination, which was finally concluded on 26.2.2013. Even till the conclusion of his cross-examination, the petitioner/plaintiff has not whispered about the alleged dispossession dated 20.6.2012. It is in these circumstances that the learned Advocate Shri Patil submits that a false date of alleged dispossession is being set out only to camouflage the laches on the part of the petitioner. It is denied that such a dispossession has taken place on 20.6.2012.

16. In the case of Dela (supra) the facts of the said case have been noted in paragraph No. 3, which are as under:-

3. Suit is presented by the plaintiff, in the year 2005, initially seeking a declaration that the mutation entry recorded in the revenue record is illegal and for a decree of injunction. It is the contention of the petitioner that application Exhibit-6 presented by the petitioner claiming an order of temporary injunction against the defendant was turned down by the trial Court and thereafter the defendant has forcibly assumed possession over the disputed property. The plaintiff, as such, seeks amendment and claims recovery of possession. The plaintiff also seeks to impeach the transaction dated 12.02.1999 allegedly entered into between the plaintiff and defendant. Plaintiff wants to contend that the transaction entered into between the parties is nominal one and by way of loan transaction and was not to be acted upon.

17. Since the issue was with regard to the decree of injunction, an order rejecting the application for temporary injunction was passed by the trial Court, which led to the subsequent dispossession of the plaintiff. This was considered by this Court to be a good ground for permitting the amendment since the plaintiff in Dela's case (supra) had specifically filed an application for temporary injunction. It was in that backdrop that this Court appreciated the subsequent dispossession and, therefore, concluded that the cause of action was neither being altered nor could the plaintiff be subjected to multiplicity of litigation. It

was noted that some part of the proposed amendment related to events, which were already mentioned in the suit.

18. In the case of Shakuntala (supra), the facts recorded by this Court in paragraph No. 3 are as under:-

3. The back ground facts as disclosed in the petition are as under:-

The petitioners herein, are the original plaintiffs and the respondents herein, are the original defendants in Regular Civil Suit No. 310 of 2000. The said suit is filed for declaration and injunction against respondent Nos. 1 to 3. In the said suit, the petitioners herein, filed application for amendment in the plaint, which came to be rejected by the impugned order. Hence, this writ petition.

19. In the case of Shakuntala (supra), the suit was filed for declaration as well as injunction. Subsequently, there was a dispossession. By way of an amendment, Shakuntala had sought relief of restoration of possession. It was specifically noted by this Court, by allowing such amendment, that the nature of the suit would not change as the prayer is for declaration and injunction and the sale deed executed by the defendants was sought to be declared null and void in order to avoid the dispossession.

20. It was, therefore, observed in paragraph No. 10 as under:-

10. In the facts of the present case, voidness of sale deed is implicit in the pleadings in the plaint and the plaintiffs have sought relief of restoration of possession of the suit land since according to them, possession of suit land is taken by defendant Nos. 2 and 3 with the police aid during the pendency of the suit.

It was, in these circumstances, that the amendment was allowed and more so to avoid multiplicity of litigation.

21. It is no doubt settled law that multiplicity of litigation by and large, deserves to be avoided wherever possible and since agriculturists were involved in the above referred two cases. This Court has ruled in the case of Dela (supra) that since agriculturists hail from rural areas and are not conversant with the procedural intricacies, a liberal approach needs to be adopted.

22. Distinguishably, in the present case, the defendants had declared that they were in possession, through their written statement, on 9.10.2006. The 7/12 extracts indicates that the defendants were cultivating the land, which could not have been possible for them without being in possession. Though this Court has no intention of deciding as to who is in possession in the present Writ petition, the petitioner could have moved an application for amendment looking to the fact that the defendants had declared that they were in possession and the petitioner was seriously apprehensive about their forcible acts. Yet, an application for injunction was not filed inasmuch as the plaint was not sought to be amended.

23. The petitioner/plaintiff, stepped into the witness box in his additional examination-in-chief on 24.7.2012 and was subjected to cross-examination, which was concluded on 26.2.2013. I find it unbelievable that the petitioner was not aware that he was dispossessed or that he forgot to mention this fact to his lawyer or in his additional examination-in-chief.

24. An application is filed on 20.3.2013 for seeking amendment. In the said application, it is nowhere pleaded, as to when did the petitioner acquire the knowledge of his dispossession and as regards due diligence on his part in bringing this to the notice of the Court at the earliest. There are no such pleadings in the application Exhibit 82. Moreover, the suit is not for injunction and no application for temporary injunction was filed, as was the case in Dela (supra) and Shakuntala (supra).

25. In the light of the above, no doubt, the petitioner, by the rejection of his application for amendment, will have to take recourse to law and avail of such a remedy as may be available to him in law. There is a possibility that he would have to initiate a suit for redressal of his grievance. However, the ratio laid down by this Court in the cases of Dela and Shakuntala (supra) is based on altogether different set of facts. In the instant case, laxity, negligence and lack of due diligence on the part of the petitioner have, therefore, led to the passing of the impugned order, which I do not find to be perverse and unsustainable in law.

26. In this view of the matter, I do not find that the impugned order calls for any interference. The judgment cited by the petitioner would not assist him in view of the peculiar facts of this case as recorded herein above.

27. The Writ Petition is devoid of merits and is, therefore, dismissed. No order as to costs.