

(1996) 08 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 3300 of 1989

Vithal Ramchandra Patil

APPELLANT

Vs

Bhagwat Waman Gaikwad and Others

RESPONDENT

Date of Decision : 05-08-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 7, Order 8 Rule 10, Order 8 Rule 5, 151

Constitution of India, 1950 — Article 227

Citation : (1997) 4 BomCR 327 : (1996) 98 BOMLR 597 : (1996) 2 MhLj 1064

Hon'ble Judges : R.G. Deshpande, J

Bench : Single Bench

Advocate : V.T. Choudhari, for the Appellant;

Final Decision : Allowed

Judgement

R.G. Deshpande, J.—Regular Civil Suit No. 59/1981 was filed by the present respondent No. 1 as a plaintiff against the present petitioner and three others in the Court of the Civil Judge, Junior Division, Jamner, on the ground that the sale deed dated 12-5-1976 executed by the original defendant No. 2 - Smt. Parvatibai wd/o Waman be declared as sham and bogus and not binding on the plaintiff and the original defendants 2 to 5. The sale-deed was executed in favour of the present petitioner (original defendant No. 1) for Rs. 6,000/-, the land being Gut No. 31 with an area of 1 hectare 55 R situated at village Takali (Bk), Tq. Jamner District Jalgaon. The suit was filed on 31st March 1981 and summons was issued on 1st of April 1981 thereby fixing the date for appearance of the defendants and for filing of written statement on 21st April, 1981. The record indicates that from 21st April 1981 onwards for one reason or the other, the defendant No. 1 could not file the written statement. On every date, necessary application was made for extension of time to file written statement. From the record, it is seen that about 7 to 8 adjournments were given on this count. It is pertinent to note that on most of the dates, the defendant No. 1 appeared through his Counsel and also had filed applications for extension of time to file written statement. The

material date is 30th July 1983 on which date, again, the defendant No. 1 failed to file his written statement and sought for adjournment. The learned Judge granted time to the plaintiff to file his affidavit in support of the suit claim on 11-8-1983. Thereafter, it appears from the record that it was on the 5th of September 1983 only, on which date the plaintiff filed affidavit in pursuance of the order dated 30-7-1983. On 5-9-1983 itself the defendant No. 1 i.e. the present petitioner filed Exh. 28 requesting the Court to take his written statement on the record and the learned Civil Judge, Junior Division, Jamner who dealt with the matter after having objection from the plaintiff, rejected the same by his order dated 13th February, 1984, whereby the learned Judge of the Trial Court ordered, "Heard. Vide order dated 20-8-1982, the defendant No. 1 - Vithal Ramchandra is proceeded in default of W.S. Relying on the authority reported in 1982 M.L.J. 188, this application stands rejected."

It is this order passed below Exh. 28 which is under challenge by way of this petition.

2. Shri V.T. Choudhari, the learned Counsel for the petitioner, argued that from the record it is clear that the day on which the written statement was submitted i.e. 5-9-1983 only on that day, the affidavit was also filed by the plaintiff in support of his suit claim. According to Shri Choudhari, in fact, the learned Judge of the trial Court should have permitted the defendant No. 1 to produce his written statement on record and the same should have been accepted by him as, according to him, till then, in fact, no order whatsoever as regards passing of the decree by the learned Judge of the trial Court, was passed. The question that arises in the present matter is as to whether the learned Judge of the trial Court in accordance with the inherent powers vested in him, could have allowed the defendant to produce his written statement on the record and that too in the interest of justice, particularly when till then the learned Judge of the trial Court had not proceeded to pass a decree on the basis of the plaint and the affidavit in support thereof.

3. It appears, in the present type of case, particularly when there is no written statement filed by the defendant, the learned Judge either could have proceeded under Order 8, Rule 10 of the CPC or, if found appropriate, could also thought of taking the help of provisions of Order 8, Rule 5 of Civil Procedure Code. However, there was no specific order of proceeding ex-parte against the defendant and hence the question of any application at the instance of defendant under Order 6, Rule 7 did not arise.

4. Shri Choudhari, the learned Counsel for the petitioner, in all solemnity argued that it was necessary in the interest of justice to have allowed the written statement of the defendant No. 1 on the record and since according to him, the learned Judge of the trial Court failed to exercise properly the jurisdiction vested in him, this Court under Article 227 of the Constitution should interfere which, according to Mr. Choudhari, is necessary in the interest of justice.

5. In the present matter, there is no appearance on behalf of the respondents though served and, therefore, I have had no advantage of hearing the case on behalf of the respondents here.

6. It is seen that the learned Judge of the trial Court has nowhere referred to any provisions of law while passing the specific order. It is, therefore, pertinent that the order could not be under Order 8, Rule 10 or else the learned Judge could have straightaway proceeded to pass a decree. When the learned Judge did direct the plaintiff to file an affidavit, at the most, it could be said that the trial Judge tried to invoke the provisions of Order 8, Rule 5 of CPC and if it is so whether under the inherent powers of the Court or whether the Court could have allowed the written statement to be taken on record in the interest of justice. It is well-established principle of law that inherent powers of the Court could be invoked to meet the ends of justice and if, it is found that there is apparent injustice likely to be caused to any of the parties, obviously the Court could resort or invoke the said powers.

7. Shri V.T. Choudhari, the learned Counsel argued that, in fact, the written statement can be permitted during the course of any stage of hearing till the passing of the judgment and decree by the concerned Court. Mr. Choudhari in support of his contention relied on two decisions i.e. Ramesh Chandra Bhattacharyya Vs. Corporation of Calcutta and Others, , and AIR 1987 P. & H. 435 in the matter of Mehar Chand v. Suraj Bhan². The ratio of these judgments as could be seen is that for the ends of justice if necessary the written statement can be admitted on the record till the Court proceeds to deliver the judgment. Even otherwise, according to him, particularly when the Court did not pass the order under any specific provision of law but simply rejected the application for taking the written statement on record, on the basis that written statement if not filed the matter should proceed further, would not mean that the defendant was shut forever from filing his written statement at appropriate stage, if it would have been permissible under law. The only thing was, it was for the learned Judge to see that no prejudice was likely to be caused to the plaintiff.

8. A specific question was asked to the learned Counsel for the petitioner as regards the maintainability of this writ petition. However, the learned Counsel brought to my notice that since the matter is already admitted, it would not be fair for this Court to deal on this point at this stage, particularly when the respondents are also not represented before this Court. However, in the interest of justice, I feel that it is a fit case wherein the defendant No. 1 be allowed to file his written statement and after taking the same on the record, the learned Judge of the trial Court shall proceed with the matter and dispose of the suit by the end of March 1997, in any case. With this direction, the writ petition is allowed. Rule is made absolute. However in the circumstances of the case, no order as to costs.

9. The record and proceedings of the trial Court be sent back immediately without any further loss of time.