

MHRG170066192019



**IN THE COURT OF DISTRICT SESSIONS JUDGE
AT PANVEL, DISTRICT- RAIGAD**

REGULAR CIVIL APPEAL NO.478/2019

Gangadhar Krishnaji Dharap & Ors. --- Appellants

Vs.

Swaroop Surendranath Chopra & Ors. --- Respondents

Corum - Santosh C. Shinde

Date - 03rd April 2025

Appearance-

Ld. advocate Mr. D. N. Joshi for Appellants

Ld. advocate Mr. R. V. Oak for Respondents

Order below Exh.86

1. This application is filed under Rule 16 of Order VI r/w section 151 of the CPC for deletion of three words which as per appellants were added by plaintiff by manipulation.
2. Say of other side was called upon. Say is filed at exh.89 and the application is strongly objected.
3. Heard Ld. advocate Mr. D. N. Joshi for appellants & Ld. advocate Mr. R. V. Oak for respondent No.1/1.
4. Advocate Mr. D. N. Joshi submitted that words " and handed over possession" in para 26(a) of plaint in Special Civil Suit No. 82/1985 were added without permission of the Court.

5. These three words were not mentioned in the plaint till final argument. Even till decision of the case, these words were not incorporated. There is no pleading regarding possession in para 20 of the plaint. When summons was served upon defendants, in copy of plaint attached with summons, these three words were not incorporated. If possession is claimed, then there should be pleading to that effect in the plaint. As these words are incorporated, it is illegal addition or interpolation which needs to be deleted.
6. Ld. advocate Mr. R. V. Oak submitted that suit is of the year 1985. Relief of possession is prayed in prayer clause. Even the Trial Court has framed issue of possession. Issue framed by the Trial Court regarding possession is answered in the judgment. Issue of interpolation was not raised before the Hon'ble Bombay High Court. Fact of interpolation was not brought to the notice of the Trial Court. Copy of suit register is not produced. Relief of possession can be sought in execution petition. Rule 16 of Order VI of CPC applies to the Trial Court and not to appellate Court. Now that issue cannot be raised in appeal.
7. Mr. Oak further submitted that certified copy which is obtained by plaintiff shows that these three words are already in plaint and there are initials of advocate. If those words were not in the plaint, then Trial Court would not have framed issue about possession. At this stage we cannot jump to the conclusion about interpolation. It is not clarified why criminal action was not taken for said interpolation. Now original plaintiff is no more as well as some advocates

who looked into matter in the trial court are also no more. After 40 years such application is filed. This application is filed to protract litigation.

8. Perused record.
9. Present appeal is pending against judgment & decree dt.7th January 1991 in Special Civil Suit No.28/1985 passed by the Jt. CJSD Court Alibag-Raigad. Initially, appeal was filed before Hon'ble Bombay High Court and on ground of pecuniary jurisdiction, it was transferred to District Court, Raigad-Alibag. Thereafter, appeal was transferred to District Court, Panvel. This appeal is old and pending for long time.
10. As per appellants after inspection of record & proceeding, they came to know about illegal interpolation in plaint of Special Civil Suit No.28/1985. As per appellants interpolation of three words namely "**and handed over possession**" is made in para-No. 26(a) of the plaint. It is contention of appellants that when they received suit summons along with plaint copy, these three words were not incorporated in copy of plaint and words were not incorporated in form of legal amendment which is amounting to fraud upon the Court & defendants.
11. Ld. advocate for appellants has placed on record photocopy of plaint which was as per appellant was received with suit summons. In photocopy these three words are not seen in para 26(a). Ld. advocate for respondents has placed on record colour photocopy of certified copy of plaint which shows that these three words are hand written in para-No.26(a) of the plaint. Along with it, receipt given with

certified copy is also attached which shows that certified copies were received in the month of August 1990.

12. In application another contention of Ld. advocate for appellants that as per section 22 of the Specific Relief Act, 1963, relief of possession cannot be granted unless it is pleaded & prayed. Whereas as per Ld. advocate for respondents, relief of possession can even be claimed in execution. At this stage, it would not be proper to comment on application of section 22 of Specific Relief Act as present application is filed under Rule 16 of Order VI of the CPC.
13. In application, appellants have not stated as to why application under Rule 16 of Order VI of the CPC was not filed before Trial Court or before Hon'ble Bombay High Court. During trial such type of objection was not raised. This application is filed at belated stage when more than 30 years have been lapsed.
14. Rule 16 of Order VI of the CPC deals of striking or pleading. Under this Rule there are three categories whereby pleadings can be struck out. At any stage of the proceeding if Court is of the view that any matter in the pleading is falling within any of these three categories then the Court can strike out such pleading.
15. As per appellants there is interpolation while as per respondents three words were already in plaint at the time of filing of suit and near addition of words, there is initial signature of the advocate. As decree judgment in Special Civil Suit No. 28/1985 is under challenge before this Court,

issue of interpolation can be considered while finally deciding the appeal.

16. At present for aforesaid reasons, I do not find any merit in the application for striking out pleadings. Issue of manipulation or interpolation shall be considered & properly dealt with during final decision of this appeal. As a result, I pass following order.

ORDER

1. Application is rejected.
2. No order as to cost.

Panvel
Date - 03/04/2025

(S. C. Shinde)
District Judge-3, Panvel
Dist.-Raigad