

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

WRIT PETITION NO. 2161 OF 2015

Parmeshwar s/o Sampat Lokhande ... Petitioners

Versus

Arjun s/o Sampat Lokhande
& another ... Respondents

.....
Mr. B.R. Sontakke, Advocate for petitioner
.....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 4th MARCH, 2015

PER COURT :

1. I have heard the learned Advocate for the petitioner for quite time. His submissions can be summarised as follows :-

- a. The petitioner is the original defendant in R.C.S. No. 344 of 2011.
- b. The suit is for declaration and perpetual injunction.
- c. WS was filed on 10-10-2012.
- d. The petitioner has consistently taken a stand that he is in possession.
- e. Temporary Injunction application filed by the plaintiff was rejected.
- f. Revenue records are in favour of the petitioner.
- g. Application for amendment below Exhibit 45 has been filed by the respondent after the commencement of the Trial.

- h. A false cause of action is stated to have occurred on 15-07-2014 only to support the Exhibit 45 filed on 25-07-2014.
 - i. The Trial Court failed to consider that a false ground for amendment has been created and in the light of the Written Statement the contentions set out in application Exhibit 45 should have been rejected.
 - j. By the proposed amendment, the nature of the suit is sought to be altered.
 - k. Grievance of the petitioner is that the application for amendment to the plaint filed by the plaintiffs has been allowed despite the commencement of the Trial.
2. The petitioner has relied upon the following judgments :-
- a] *J. Samuel & others Vs. Gattu Mahesh and others, reported at (2012) 2 SCC 300.*
 - b] *Prakash Ratanlal @ Ratansa Kasari Vs. Bhika s/o Banda Dhage & another, reported at 2010 (1) Mh.L.J. 810.*
 - c] *Dnyandev Ramlal Patil Vs. Sanjeev Bhavlal Patil and others, reported at 2014 (6) Mh.L.J. 400.*
 - d] *Ashok Tefilo Vaz and others Vs. State of Goa and others, reported 2015 (1) Mh.L.J. 197.*
3. Having heard the learned Advocate for the petitioner, I have gone through the petition paper book with his assistance.
4. It is settled law that while deciding an application for amendment, the merits of the proposed amendment is not to be

considered. As such, in my view, the Trial Court has rightly not gone into the merits of the proposed amendment.

5. In so far as the proposed amendment is concerned, the plaintiff has sought to include the exact details about the suit land. In the second proposed paragraph, it is stated that subsequent to the institution of the suit, an event occurred on 15-07-2014 when the petitioner allegedly took possession of a portion of the suit land.

6. It is on the basis of the subsequent events that the plaintiffs moved an application within ten days on 25-07-2014 below Exhibit 45. As such, the cause of action set out by the plaintiff is dated 15-07-2014 and the said subsequent events are sought to be included in the plaint by moving application Exhibit 45 on 25-07-2014.

7. In *J. Samuel and others* case (supra), issue about due diligence was dealt with. A typographical error was sought to be corrected and the Apex Court came to a conclusion that there was no evidence of due diligence on the part of the plaintiffs who desired to include 3 to 4 sentences on the plea of typographical error. In a suit instituted in 2004, the typographical error was

sought to be corrected in 2010. It is therefore clear that the facts in *J. Samuel and others* (supra) are different than those appearing in the case in hand.

8. in the case of *Prakash Ratanlal @ Ratansa Kasari's* (supra), the suit was preferred in 2002 and addition of party was sought. Details as regards a sale-deed which had been signed before the institution of the suit, was the basis of the amendment. Dealing with the issue of due diligence, this Court had concluded that the Court can allow the application for amendment if it is found that there was due diligence as required under the proviso to Order VI Rule 17 of Code of Civil Procedure (CPC). As such, on facts, the ratio laid down in the *Prakash Ratanlal @ Ratansa Kasari* (supra) case would not be applicable.

9. In the judgment which I have delivered in *Dnyandev Ramlal Patil's* case (surpa), suit was filed on 09-10-2006. The plaintiff did not file any amendment application after receiving the Written Statement. The defendants were cultivating the land from 2004 onwards. Evidence of the plaintiff was concluded and there was no contention of dispossession alleged to have occurred on 26-02-2012. After the defendant was cross-examined, an application was filed seeking leave to amend. It was in these

circumstances that the order of the Trial Court rejecting the application for amendment, was upheld by this Court.

10. In the case of *Ashok Teofilo Vaz and others* (supra) this Court allowed the application for amendment on the ground that even if the Trial of a suit has commenced, if due diligence is indicated, an amendment can be allowed.

11. As such, as observed herein above that the Trial Court had allowed the amendment application on the ground that an event that occurred 15-07-2014 was sought to be incorporated in the plaint by an application filed on the 10th day from the date of occurrence. I do not find that the impugned order could be termed as perverse or erroneous. As such, the petition is devoid of merit and the same is dismissed.

(**RAVINDRA V. GHUGE, J.**)