

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

WRIT PETITION NO. 5807 OF 2014

Ramu s/o Bhikaram Ghimrud,
Age: 58 years, Occ: Agri.,
R/o. Ashta, Tq. Bhoom,
Dist. Osmanabad.

...Petitioner

versus

1. Putalabai w/o Balbhim Ghimrud,
Age: 50 years, Occ: Agri.,
2. Sunil s/o Balbhim Ghimrud,
Age: 22 years, Occ: Agri.,
3. Anil s/o Balbhim Ghimrud,
Age: 25 years, Occ: Agri.,
4. Balbhim s/o Bhikaram Ghimrud (Died),
Age: 48 years, Occ: Agri.,
R/o. Ashta, Tq. Bhoom,
Dist. Osmanabad.
- 4A. Mangal Suhas Suke,
Age: 35 years, Occ: Agri.,
R/o. Shekhapur, Tq. Bhoom,
Dist. Osmanabad.

...Respondents

.....
Mr. Manoj Shelke, Advocate for petitioners.
Mr. S.Y. Mahajan, Advocate for respondents.
.....

CORAM : N.W. SAMBRE, J.

DATE : 29TH APRIL, 2015

ORAL ORDER :

The petitioners have suffered rejection of prayer for amendment in the suit which was sought by an application

Exhibit-110 by an order dated 20/02/2014.

2. The petitioner-plaintiff initiated the suit for declaration and injunction. When the said suit reached at the stage of arguments, he has moved an application seeking to incorporate the word Gat No. 414, 'old Gat No. 545' in paragraph-2, prayer clause and plaint map. Learned trial Court rejected the same on the ground that same was moved at belated stage and there is no reasonable explanation thereto.

3. Mr. Mahajan, learned Counsel for the respondent, while opposing the prayer for grant of amendment, would urge that trial in the suit has reached at concluding stage. According to him, if the amendment is granted, same will amount to re-opening of the entire trial. According to him, the said insertion changes the nature of the suit, as the petitioner-plaintiff is not owner of the suit property.

4. If the rival contentions of the parties are taken into account, it is noted that the suit has reached at advanced stage of hearing. If the nature of amendment that is to be incorporated in the plaint is considered, the petitioner-plaintiff is not seeking any change in the dimensions, boundaries, area or location of the property but has sought to clarify the suit property by inserting old Gat number

alongwith existence of Gat Number in paragraph-2, prayer clause and plaint map.

5. In my opinion, the said amendment which goes to the root of the matter for the purpose of deciding real controversy involved needs to be granted. No doubt, the suit has reached at the stage of hearing. However, this Court cannot loose the sight of the fact that the petitioner, who is uneducated person, was not aware about the above referred important aspect of the matter which needs to be clarified in the suit. Apart from above, this Court can draw support from the judgment of the Apex Court in the matter of **Sajjan Kumar vs. Ram Kishan** reported in **2005(13) SCC 89** so as to grant such amendment for deciding the real issue in controversy.

6. As such, the order impugned is hereby set aside. The application for amendment Exhibit-110 stands granted. The petitioner herein shall deposit the amount of Rs.3000/- (Rs. Three thousand only), within six weeks from today, in addition to Rs.5000/- (Rs. Five thousand only) already deposited before the trial Court,

7. The defendants will be at liberty to withdraw the same.

8. Since the suit is of the year 2000, it is expected of the

trial Court to decide the suit within period of six months from today.

9. The writ petition stands disposed of, in above terms.

[N.W. SAMBRE, J.]