

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7513 OF 2014

Ramdas Bhaguji Dighe,
Age : 52 years, Occu. Agril.,
R/o. Varwandi, Taluka Sangamner,
District Ahmednagar

...PETITIONER
(Orig.Deft. No. 5)

VERSUS

- 1) Baban Bhaguji Dighe,
Age: 58 years, Occu. Agril.,
- 2) Narayan Bhaguji Dighe,
Since Deceased through his L.Rs.
- 2A) Janabai Narayan Dighe,
Age: 75 years, Occu. Household
- 2B) Murlidhar Narayan Dighe,
Age: 52 years, Occu. Agril.
- 2C) Raju Narayan Dighe,
Age: 58 years, Occu. Agril.
- 3) Vithal Bhaguji Dighe,
Age: 62 years, Occu. Agril.
- 4) Lahanu Salaba Dighe,
Age: Major, Occu. Agril.
- 5) Anna Bhaguji Dighe,
Age: 62 years, Occu. Agril.

- 6) Babai Anna Dighe,
Age: 52 years, Occu. Agril.,
Nos. 1 to 6
R/o Varvandi, Taluka Sangamner,
District Ahmednagar
- 7) Bajabai Laxman Wale,
Since deceased through L.Rs.
- 7A) Karbhari Laxman Wale,
Age: 70 years, Occu. Agril.
- 7B) Prabhu Laxman Wale,
Age: 64 years, Occu. Agril.
- 7C) Devram Laxman Wale,
Age: 60 years, Occu: Agril.
- 7D) Bhausahab Laxman Wale,
Age: 55 years, Occu. Agril.
Nos. 7A to 7D R/o Zol,
Taluka Sangamner,
District Ahmednagar
- 7E) Kesharbai Damu Bhor,
Age: 67 years, Occu. Household,
R/o. Ambad, Taluka Akole,
District Ahmednagar

7F) Ghungarabai Balu Kadlak,
Age: 52 years, Occu. Agril.
R/o. Jawale Kadlak, Taluka Sangamner,
District Ahmednagar

...RESPONDENTS
(No.1 Orig. Plff.
Nos. 2 to 7 Orig. Defts.)

Mr P.V. Barde, Advocate for petitioner;
Mr V.Y. Bhide, Advocate for respondents no.1, 2-A to 2-C & 3 to 6

CORAM : N.W. SAMBRE, J.

DATE : 20th January, 2015

ORDER

By the present writ petition, the petitioner/original defendant no.5 seeks to challenge the order dated 1st April, 2014, passed by 2nd Joint Civil Judge Junior Division, Sangamner, below Exh.105, in Regular Civil Suit No.289 of 1996, whereby prayer of respondent no.1/original plaintiff for amendment of plaint came to be granted.

2. According to the learned Counsel appearing on behalf of the petitioner/defendant no.5, the amendment is sought at the fag end of the proceedings, when it was fixed for final arguments of plaintiff, arguments of the defendants were over and the suit was posted for reply of the plaintiff. He further urged that the order passed by the Trial Court reflects non application of mind as according to him, in paragraph 1 of the plaint, schedule of property is described along with its boundaries, whereas in

the amendment application, the said boundaries are sought to be changed on the ground that there was bifurcation of village Varwandi into Varwandi and Chaudharwadi on revenue record. Learned Counsel for the petitioner submits that even if presuming that there is a bifurcation of village and as such the Gat numbers are changed, according to him, the boundaries would not change, viz. Road, forest, etc. and the learned Trial Court has not taken into account the said aspect while allowing amendment application.

3. When paragraph 1 of the plaint, which describes the suit property, is compared to that of the property which is sought to be re-described in the amendment application, it is noticed that there is a substantial deviation as regards boundaries of the suit property. The said change in the boundaries is objected by the petitioner on the ground that the same was not established before the Court below, as no documentary evidence in support of matching of boundaries in the plaint and that of in the amendment application was placed on record.

4. Learned Counsel appearing on behalf of the petitioner further submits that the petitioner is not objecting to the amendment to the extent of change in Gat numbers of the suit property and that of bifurcation of village, however, he is objecting the amendment sought to the extent of boundaries of the suit property.

5. Learned Counsel appearing on behalf of respondent no.1/plaintiff submits that he is required to take appropriate instructions from the petitioner as regards non-matching of boundaries with that of paragraph no.1 of the plaint and the one described in the amendment application.

6. Perusal of the impugned order reflects that the change in the boundaries was not duly taken into consideration and discussed by the Trial Court while passing the impugned order. It was expected of the learned Trial Court to look into the said issue. As such, in my opinion, case for remand is made out.

7. In the light of above, the order dated 1st April, 2014, passed by 2nd Joint Civil Judge Junior Division, Sangamner, below Exh.105, in Regular Civil Suit No.289 of 1996, is hereby quashed and set aside. The matter is remanded back to the Trial Court to pass order on application Exh.105 afresh, after giving opportunity to the parties to place on record sufficient evidence demonstrating the matching of the Gat numbers of the boundaries described in the plaint and that of amendment application.

Writ Petition stands allowed to the above extent with no order as to costs.

(N.W. SAMBRE, J.)

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