

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

WRIT PETITION NO.10026 OF 2015

Shivmurti s/o Shankarrao Gheware,
Age 58 years, Occupation Retired,
R/o 15, Matoshri Gurujan Co-op. Housing
Society, Tilaknagar, Aurangabad

.. Petitioner

Versus

1. Suhas s/o Uttamrao Lungare,
Age 52 years, Occu. Business,
R/o Ketan Medical Stores,
Gurujan Co-op. Housing Society,
Tilaknagar, Aurangabad
2. Uttamrao s/o Jagannathrao
Lungare,
Occu. Pensioner,
R/o Gurujan Co-op. Housing Society,
Tilaknagar, Aurangabad

.. Respondents

Mr A.D. Kasliwal, Advocate for petitioner
Mr K.J. Suryawanshi, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 16th November 2015

PER COURT

1. This petition is by successful plaintiff in whose favour a decree for separate possession was passed in Special Civil Suit No.156 of 2015, which was subject matter of challenge in Regular Civil Appeal No.220 of 2009 pending on the file of Assistant Sessions Judge-2, Aurangabad at the behest of defendant. In the said appeal, the present petitioner – plaintiff has filed an application for amendment of the plaint vide Exh.34 which came to be rejected by an order dated 2nd September 2015, as such present petition.

2. Learned Counsel for the petitioner would urge that the application should have been granted by the Court below, as what was sought to be carried out by virtue of amendment is only verification and explanation to the existing pleadings and the amendment won't change the nature of the suit. Learned Counsel Mr Kasliwal then would urge that the suit has been decreed in favour of the present petitioner, therefore grant of amendment as prayed would have hardly any impact on the merits of the matter in appeal at the behest of respondent. According to him, the lower appellate Court has not recorded any reasons for rejecting the application and prayed for grant of application for amendment.

3. Learned Counsel for respondents herein who are appellants before the lower appellate Court would urge that the rejection of the application is based on the provisions of Order VI, Rule 17 of the Code of Civil Procedure. According to him, the case of the plaintiff is based on the two agreements and if the amendment, as sought for is granted, wherein the petitioner has sought deleting the word 'remaining', the same changes the entire nature of claim. According to him, the learned lower appellate Court has recorded sufficient reasons for rejection and prayed for dismissal of the petition.

4. Having considered the rival submissions, it is required to be noted that at Exh.19, the learned trial Court has framed issues wherein the trial Court has referred the agreements dated 5th March 1991 and 4th July 1991. The issue No.1 and 4 deal with the two agreements and the consideration mentioned therein, which is

Rs.1,50,000/- and Rs.3,00,000/-, respectively. The difference between these two issues is while proving the issue No.4, the burden is cast on the defendant.

5. The fact that in the two agreements, there are different amount of consideration and the word sought to be deleted by virtue of amendment 'remaining' will have direct bearing over the claim which was sought to be put forth in the suit.

6. In view thereof it is required to be noted that if the amendment is granted, the same changes the nature of the claim.

7. In view thereof, in my opinion, no case for interference is made out. As such, the petition fails, stands dismissed.

(N.W. SAMBRE, J.)

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