

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

WRIT PETITION NO. 541 OF 2015

1. Savitribai Balu Kokani,
Age: 52 years, Occu. Agri. &
Household
2. Somnath Balu Kokani,
Age : 35 years, Occu. Agril.,
3. Vaijanatabai Somnath Kokani,
Age: 32 years, Occu. Household,

All R/o Pargaon [Dhankhadi],
Taluka Sakri, District Dhule

...PETITIONERS
(Ori. Defendants)

versus

Sau Gokulbai Ramesh Gaikwad [Kokani]
Age: 45 years, Occu. Household,
R/o Brahmanvel Taluka Sakri,
District Dhule.

...RESPONDENT
(Ori. Plaintiff)

.....
Mr. Amol S. Savant, Advocate for Petitioners
Mr. D.P. Palodkar, Advocate for respondent
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 28th AUGUST, 2015

Order :-

1. This petition has been moved by original defendants against order dated 06-11-2014 on Exhibit-72 in Regular Civil Suit No. 22 of 2010, passed by civil judge, junior division, Sakri, District Dhule, allowing amendments to plaint with liberty to lead evidence. Challenge to the order is on the ground that amendment application was moved after evidence of either side had been over.

2. According to plaintiff, the description of the properties which have reference earlier in the plaint had basis of certificate/map supplied by the then talathi. It appears that certificate issued not being in tune with factual position, new certificate has been issued by the talathi and accordingly application for amendment came to be filed. The trial court has allowed the same having regard to that the suit is for partition of the properties and alternatively description would not match with the factual position.

3. Learned counsel for the petitioner submits that as a matter of fact there is embargo on consideration of said application having regard to provisions of Order VI, Rule 17 of the Civil Procedure Code for lack of due diligence. Learned counsel submits that granting liberty to the parties to lead additional evidence, if any, was absolutely unnecessary, particularly when none of the parties had requested for the same. He, therefore, submits that order being not in tune with position of law and facts, same be set aside.

4. Learned counsel appearing for respondent places reliance on decision rendered by a learned single judge of this court in case *Vijaykumar Narayanrao Dixit Vs. Uday Griha Nirman Samsaya Niwarak Sanstha, Nagpur* reported in 2006(3) Mh.L.J. 676 and contends that merely because evidence was recorded, it does not mean that the plaintiff cannot be permitted to take corrective measures. He further submits that evidence would be restricted, if any, to the amendments and apprehension being expressed about new cause of action being introduced by the petitioners can be taken care of appropriately. He

thus submits, order which otherwise does not suffer infirmity, does not require interference.

5. After hearing the learned counsel for parties, it appears that plaintiff-respondent is rustic villager, who is stated to have stayed away from the place where the property is situated and as such, not in a position to give correct description of the suit property and has given the description as has been given by talathi. Apprehension expressed by learned counsel for petitioners, if occasion for the same arises may be contended and considered while plaintiff leads evidence in this respect. The considerations which have weighed with trial court while allowing amendments do not appear to be irrelevant in the facts and circumstances of the case. As such, I am not inclined to interfere with the impugned order.

6. Writ petition, as such, stands rejected. No order as to costs.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK
