

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 226 OF 2015

SHRI. HANUMAN DEU DABOLKAR AND
ANR.,

... Petitioners

Versus

SMT. VASSANTI VASUDEV MULGAONKAR
AND 4 ORS.,

... Respondents

Mr. Vishnuprasad A. Lawande, Advocate for the petitioners.
Mr. Ashwin D. Bhobe, Advocate for the respondent nos.2, 3, 4a to
4d.

Coram:- M. S. SANKLECHA, J.

Date:- 27th April, 2015

P.C.

The challenge in this petition is directed against the order dated 21/02/2015 passed by the Trial Court. By the impugned order, the petitioners' application for amendment of the plaint under Order VI, Rule 17 of the Code of Civil Procedure (C.P.C.) was rejected.

2. The Trial Court, by the impugned order, has rejected the petitioners' application holding that the proposed amendment cannot be allowed as it would lead to confusion. Besides, the additional prayer sought in the proposed amendment, would change the nature of the suit. It is an admitted position that the issues have been framed and evidence was also led by the petitioners/ original plaintiffs and was also subjected to cross-examination by the respondents before filing of an application for amendment of the plaint.

3. Mr. Lawande, the learned Counsel appearing for the petitioners submits that at the time of considering the amendment

application, it is beyond the jurisdiction of the Trial Court to consider the merits of the amendment application. Besides, the additional prayer, which has been sought by the petitioners to have the property surveyed, would not in any manner change the nature of the suit. The amendment is only sought for the purpose of bringing clarity to the dispute between the parties. The additional prayer for appointment of surveyor was only to demarcate the suit property. In the above view, according to him, the impugned order is not sustainable.

4. On the other hand, Mr. A. D. Bhobe, the learned Counsel appearing for the respondent nos.2, 3 and 4a to 4d contends that the order calls for no interference. In any view of the matter, it is submitted that the proviso to Order VI, Rule 17 of C.P.C. would come into play in the present facts as this amendment application was moved after the issues were framed and evidence was led by the plaintiff. The entire object of the amendment, it is submitted, is to defeat the result of the cross-examination. Besides, it is also submitted that the appointment of Surveyor, as claimed in the prayer clause, would change the nature of the suit, which was originally only for injunction simpliciter.

5. It is well settled position in law that at the time of considering the amendment application, the merits of the amendment application can not be a subject of consideration. The same would be an issue to be decided on the basis of the pleadings and evidence led by the parties at the trial of the suit. Thus, the Trial Court rejecting the amendment application on the ground that the same would lead to

more confusion, is not proper.

6. However, the fact is that the amendment has been sought at the stage where not only the issues have been framed, but the petitioners' evidence was also led. Thus, the proviso to Order VI, Rule 17 of the C.P.C. would have to be considered by the Trial Court while dealing with the amendment application. The impugned order does not even advert to the aforesaid proviso. As pointed out above, the impugned order is not otherwise sustainable as it deals with the merits of the amendment application and is, therefore, being set aside. The Trial Court is ordered to reconsider the petitioners' amendment application afresh, inter alia, keeping in mind the proviso to Order VI, Rule 17 of C.P.C. The impugned order is set aside only as and by way of remand.

7. All the contentions of the petitioners and the objections of the respondents are left open, to be urged before the Trial Court in respect of the petitioners' application.

8. The petition stands disposed of in the above terms. No order as to costs.

M. S. SANKLECHA, J.

SMA