

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION STAMP NO.27338 OF 2015

Parashuram Narayan Deshmukh and ors. : Petitioners
versus
Uttam Narayan Gadhave and ors. : Respondents.

Mr. Sandeep M Pathak for the Petitioners.

CORAM : R. M. SAVANT, J.
DATE : 20th October 2015

P.C.

1 The writ jurisdiction of this court is invoked against the order dated 19/08/2015 passed by the learned Joint Civil Judge, Junior Division, Khandala by which order the application for amendment of the plaint came to be rejected.

2 By the proposed amendment the Plaintiffs are inter-alia seeking to give boundaries of the suit properties, claiming ownership of suit properties being Gat Nos.608 and 618 and seeking amendment in the written statement to the counter claim. The Plaintiffs have filed the suit in question for restraining the Defendants from interfering with their possession. The Plaintiffs claim that they are in possession of their shares in the ancestral properties pursuant to the partition which has taken place by and between the parties. As indicated above by the amendment, the Plaintiffs are seeking to give boundaries of the shares which they have come to them in the lands in

question pursuant to the said partition. The Plaintiffs are also seeking to lay a claim to the properties being Gat Nos. 608 and 618 and also seeking to amend the written statement to the counter claim.

3 It is required to be noted that the Defendant Nos.2 and 3 who are the sisters of the Plaintiffs have filed their written statement as well as counter claim and have sought partition of suit properties. Pertinently in the written statement filed by the Plaintiffs to the said counter claim, they have stated that there is no mention about the boundaries in the registered partition deed. However, by the amendment sought the Plaintiffs are now seeking to give boundaries of the shares in the suit lands which they have to come to them pursuant to the said partition. It is required to be noted that the instant application (Exhibit 77 was moved after the Plaintiffs had examined as many as three witnesses.

4 The amendment application (Exhibit 77) was opposed to on behalf of the Defendants. The stand taken by the Defendants is that the trial has commenced and the cross examination of the Plaintiffs' witnesses has been conducted wherein they have given certain admissions and therefore to fill up the lacunas that the instant application has been filed. It was also the case of the Defendants that the claim of ownership in so far as Gat Nos.608 and 618 is concerned is not within limitation.

5 The Trial Court considered the amendment application and having regard to the amended provisions of the Code of Civil Procedure applied the due diligence test. The Trial Court having regard to the fact that the trial has commenced inasmuch as the Plaintiffs have examined as many as three witnesses, that they have filed their written statement to the counter claim wherein they have categorically stated that in the partition deed there is no mention of the boundaries, came to a conclusion that the due diligence test has not been satisfied by the Plaintiffs.

6 The learned counsel for the Petitioners/Plaintiffs places reliance on the judgment of a learned Single Judge of this Court reported in 2012(2) Bom.C.R. 775 in the matter of N.C.Banerjee & Company as also the judgment of another learned Single Judge of this Court reported in 2006(3) Mh.L.J.676. In the matter of Vijaykumar Narayanrao Dixit v/s. Uday Griha Nirman Samasya Niwarak Sanstha, Nagpur. The said judgments have been cited on the ground that for the acts of the advocate in not incorporating the boundaries in the suit, the Plaintiffs should not suffer. In my view, the said judgments hardly aid the Plaintiffs in their endeavour to seek amendment of the plaint. As indicated above, it is categorically admitted by the Plaintiffs in the written statement to the counter claim, that the boundaries are not mentioned in the partition deed, on which partition deed much store has been

laid by them in the suit. It is contended by the learned counsel for the Petitioners/Plaintiffs that though the boundaries have not been mentioned, it was orally agreed that the Plaintiffs would be in possession of some part of the suit lands, if the said case is already incorporated in the plaint, then it is for the Plaintiffs to prove the said case by adducing cogent evidence.

7 In my view, having regard to the reasons mentioned by the Trial Court in the impugned order, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]