

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7206 OF 2010

Mr. Kantilal Nagindas Mehta]
(Since Deceased) Through L.R.s and Anr.] ... Petitioners

Versus

Smt. Veena Dilip Shah and Ors.] ... Respondents

Mr. Parag V. Dube for Petitioners.
Mr. S. D. Rayarikar, A.G.P., for Respondent Nos.3 and 4.

CORAM :- M. S. SONAK, J.
DATE :- APRIL 06, 2015

P. C. :-

1. This Court, by its Order dated 09/02/2011, had issued notice to the Respondents for final disposal. The learned Counsel for Petitioners states that service has been completed upon the Respondents and necessary Affidavit of service has also been filed in the matter.

2. This petition challenges the Order dated 17/06/2009 made by the 5th Joint Civil Judge, Senior Division, Pune, rejecting Petitioners' application for amendment of the plaint.

3. The application for amendment was made at the stage when the evidence of the Petitioners-Plaintiffs had been concluded and the matter was fixed for cross-examination of Defendant No.2. The proposed amendment comprises two parts :-

- (a) Correction insofar as certain survey numbers pertaining to the suit property are concerned;
- (b) Averments and prayer for the purposes of challenging the Judgment and Order dated 04/06/2002, as null and void.

4. Insofar as the first part of the proposed amendment is concerned, in my judgment, the same is necessary for the purposes of adjudication of the real controversy between the parties. Although, the Petitioners are guilty of delay, no useful purpose would be served by declining leave to amend and correct Survey No.'3412' to '3414' and Survey No.'3361' to '3261'. From the nature of the amendment applied for, it does appear to be obvious that such errors were either typographical or accidental. Further, the learned Counsel for the Petitioners has stated that if the amendment with regard to such correction is permitted, there will be no necessity of leading any further evidence by the Petitioners-Plaintiffs in the matter. Therefore, taking into consideration such circumstance, the impugned order, insofar as it declines the first part of the amendment i.e. correction of survey numbers, is set aside.

5. Insofar as the second part of the amendment, which comprises introduction of para 12 (a) and prayer in terms of prayer

clause (a-1), the same cannot be allowed at this stage. Admittedly, the present suit was instituted after the year 2002 and consequently, the proviso to Order 6 Rule 17 of the CPC applies to the same. In this case, leave to amend was applied for after the commencement of the trial. In the application seeking leave to amend, there is no explanation with regard to diligence, if any, exercised by the Petitioners-Plaintiffs and the circumstance that despite such diligence, the Petitioners-Plaintiffs could not have raised the matter before the commencement of the trial. The proposed amendment seeks to challenge the Judgment and Order made on 04/06/2002 and there is no averment in the application seeking amendment that despite diligence, the Petitioners were unable to raise such plea in the plaint as originally filed or apply for amendment prior to the commencement of the trial. Accordingly, there is no reason to interfere with the impugned order, insofar as it declines amendment by way of introduction of para 12 (a) and prayer clause (a-1).

6. Rule is therefore partly made absolute. The Petitioners are permitted to carry out amendment by way of correction of survey numbers as aforesaid. The impugned order, to the extent it declines leave to amend by way of introducing para 12 (a) and prayer clause (a-1), is not interfered with. In the facts and circumstances of the present case, the Petitioners shall pay costs of Rs.5,000/- (Rupees Five Thousand Only) to the State of Maharashtra which has put in appearance in the present case and further costs of Rs.5,000/- (Rupees Five Thousand Only) in favour of the legal heirs of

Respondent Nos.1 and 2, who are the contesting Respondents before the Civil Court. Necessary amendment to be carried out within a period of four weeks from today.

7. Rule is made absolute to the aforesaid extent with costs as aforesaid. The costs in favour of the State of Maharashtra may be paid to Respondent No.4 and the costs in favour of the legal heirs of Respondent Nos.1 and 2 may be deposited before the learned Civil Judge, within a period of four weeks from today.

8. All parties to act on the basis of authenticated copy of this Order.

(M. S. SONAK, J.)