

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

**WRIT PETITION (STAMP) NO.19534 OF 2015**

**Mr. Ranjeet Ramchandra Jagtap**

**.. Petitioner**

**Versus**

**Mr. Ramchandra Laxman Kharose**

**.. Respondent**

**Mr. N. V. Khaladkar, for the Petitioner.**

**CORAM : R.M. SAVANT, J.**

**DATE : 10<sup>th</sup> SEPTEMBER, 2015**

**PC.**

1. The Writ Jurisdiction of this Court under Article 227 of the Constitution of India is invoked against two orders. The first order is the order dated 03.03.2015 passed by the 15<sup>th</sup> Joint Civil Judge Junior Division, Pune, by which order the application Exh.36 filed on behalf of the Petitioner i.e. Defendant No.3 for framing of an additional issue and for re-framing of issue No.4 of the issues already framed, came to be rejected. The second order is the order dated 09.04.2015 passed by the 15<sup>th</sup> Joint Civil Judge Junior Division, Pune, by which order the application Exh.41 filed by the Plaintiffs for amendment of the plaint in respect of the boundaries mentioned therein came to be allowed and the plaint was accordingly permitted to be amended.

2. The suit in question has been filed for a declaration that the Defendant Nos.1 and 2 who are the vendors of the Defendant No.3 have no right in the property in question as according to the Plaintiffs the suit property is the self acquired property of their father Laxman Kharose. The Plaintiffs have also challenged the Sale Deed executed by the Defendant Nos.1 and 2 in favour of the Defendant No.3. The Defendants have taken a defence that the said properties are ancestral properties and that they were partitioned in the year 1978. In the light of the pleadings on record the issues were framed on 28.10.2014 amongst which is the issue No.4 of which re-framing is sought. The Defendant No.3 has also sought that the following additional issue be framed :-

“Whether the Plaintiffs have given the correct description of the suit land in the plaint and especially in regard to boundaries of the same ?”

3. The Trial Court rejected the application Exh.36 on the ground that the issues framed are sufficient and that there is no need to frame an additional issue as the burden cannot be imposed on the Plaintiffs to prove the negative. The framing of the additional issue was also rejected on the ground that the Defendant No.3 i.e. the Petitioner herein has only purchased part of the suit property, whereas the Plaintiffs are laying a claim to the entire property on the basis of the fact that their father was the exclusive owner of the same. As indicated above, the Trial Court

accordingly by its first order dated 03.03.2015 rejected the said application.

4. It seems that the Plaintiffs thereafter filed the application Exh.41 for amendment of the plaint. The suit was at the stage where it was posted for filing of affidavit of examination-in-chief, but the said affidavit of examination-in-chief was not filed on the day when the application Exh.41 was presented. By the said application Exh.41, the Plaintiffs sought amendment of the plaint to correct the description of the suit property and the said correction was on the basis of the Sale Deed No.154/1948 dated 22.10.1948 on the basis of which the Plaintiffs are laying a claim to the property. The application was founded on the fact that though the Plaintiffs were aware of the said Sale Deed dated 22.10.1948, it is only after getting a copy of the said Sale Deed that the Plaintiffs realized that the description of the property as given in the plaint was required to be corrected and accordingly filed the instant application Exh.41. The Trial Court considering the nature of the application filed namely for correcting the description of the suit property by correcting the boundaries and considering the stage at which suit was, deemed it appropriate to allow the amendment and for the delay caused has imposed costs of Rs.1500/-. In my view, since the Trial Court has deemed it appropriate to exercise discretion in favour of the Plaintiffs considering

the stage at which the suit was, no case for interdiction with either of the orders is made out. The Writ Petition is accordingly dismissed.

**[R.M. SAVANT, J]**

Certified to be true and correct copy of the original signed order.