

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9947 OF 2015

Mrs. Vimal G. Gurav & ors. .. Petitioners
vs.
Mrs. Sumati B. Panchal
(Deceased through her Lrs.) & ors .. Respondents

Mr. Rameshwar N. Gite for the Petitioners.
Mr. V.P. Tripathi for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 29 OCTOBER 2015.

P.C. :-

1] This petition challenges the orders dated 7 March 2014 and 31 August 2015, by which the Trial Court and the Revisional Court respectively have declined the Petitioners leave to amend the plaint by way of changing description of the suit property.

2] Mr. Gite, learned counsel for the Petitioners, has submitted that there was an inadvertent error in setting out the CTS No. of the suit property. The number was indicated as 101 when infact, the correct number should have been 936. Mr. Gite submitted that an amendment of this nature can be permitted even after a decree is made. He relies upon the decisions of the Apex Court in case of *Sajjan Kumar vs. Ram Kishan- (2005) 13 SCC 89 and Usha Devi Vs. Rijwan Ahmad and ors.- (2008) 5 Mh.L.J. 82*, in support of his

contention. In these circumstances, the learned counsel submits that the two Courts have failed to exercise the jurisdiction vested in them by refusing to grant leave to amend the plaint on the sole ground that the trial in the suit has been concluded and the matter is posted for judgment.

3] Having heard the submissions of the learned counsel for the parties and perused the records, in my judgment, there are no bonafides involved in seeking leave to amend. The suit was instituted in the year 2008, in which the suit premises was described as having Survey No. 129 Hissa No.7 and CTS No.101. A declaration was sought for that the Petitioners are the owners of the suit property and the structure therein. The defendants have *inter alia* contended that the property bearing CTS No.101 has already been declared as a slum area and therefore, the institution of the suit was incompetent in view of the provisions contained in Section 22 of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (said Act). On this basis, the parties went to trial. On realising that the Defendants have indeed produced Notification that the property survey under CTS No.101 has been declared as a slum area, the Petitioners applied for leave to amend

the plaint ,at a stage when the matter was posted for final judgment. Therefore, this is not a case of inadvertence or some innocent mistakes. The Apex Court in case of *Sajjan Kumar (supra) and Usha Devi (supra)* were concerned with genuine and bonafide mistakes in the matter of description of the suit property. Accordingly, the principles laid down in the said two decisions will not apply to the facts and circumstances of the present case.

4] That apart, there is no explanation whatsoever as to the delay in seeking leave to amend. In terms of the proviso to Order 6 Rule 17 of the CPC such explanation was necessary. In this case, the entire trial has been concluded and the matter was posted for judgment. Therefore, apart from the fact that the application seeking leave to amend the plaint lacks bonafides, the application was not required to be allowed in view of the proviso to Order 6 Rule 17 of the CPC.

5] On the basis of such amendment application, the Petitioners have managed to delay the proceedings, which had reached at the stage of final disposal by over a year. Accordingly, this petition is dismissed with costs of Rs.2000/-. The Trial Court to ensure that such costs are paid by the Petitioners.

6] The Trial Court to dispose of the suit as expeditiously as possible and in any case within a period of three months from today.

7] The observations in the impugned orders as well as this order are for the purposes of deciding the amendment application. Therefore, the Trial Court need not to be influenced by these observations at the stage of final disposal of the suit, in accordance with law and on its own merits.

8] All concerned to act upon the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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