

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3501 OF 2014

Prakash Shrirang Rahate Vs. Ramkrishna Mendhe thrL.Rs. Bhgirathibai Mendhe & Ors.

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Office Notes, Office Memoranda of Coram,
 appearances, Court orders or directions
 and Registrar's orders

Court's or Judge's Order

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Shri S. G. Shukla Adv for petitioner.
 Shri D. C. Chahande Adv for respondents.

CORAM: A. S. CHANDURKAR J.

DATED: JULY 01, 2015.

Challenge in the present writ petition is to the order dated 17.01.2014 passed by the trial Court rejecting the application for amendment moved by the plaintiff. The suit as filed is for permanent injunction along with prayer for declaration that plaintiff is the owner of the land in question. Along with the plaint, a map was also filed as the plaint map.

The property in question was described in the schedule to the plaint. In the written statement, a stand has been taken that boundaries as mentioned were incorrect and false.

The plaintiff examined himself and was thereafter cross examined. It is thereafter that application below Ex. 131 was moved by the petitioner seeking to amend the plaint. The amendment as sought was with regard to boundaries of the house property and certain corrections in para (1) of the plaint as well as in the affidavit filed on behalf of the plaintiff.

The trial Court by the impugned order rejected the application on

the ground that same had the effect of taking away admissions given by the plaintiff.

Shri S. G. Shukla, learned counsel for the petitioner submitted that the amendment was only in respect of corrections to be made in the boundaries as mentioned in the plaint. Said amendment was sought on the basis of sale deed of the property and hence it ought to have been allowed.

Shri D. C. Chahande, learned counsel for the respondents referred to the cross examination of the petitioner and submitted that after the petitioner was cross examined, the present application came to be moved and if the same was allowed prejudice would be caused to the defendants.

I have considered the respective submissions and after having gone through the proposed amendment along with deposition of the petitioner, the view taken by the trial Court that the proposed amendment would have the effect of taking away admissions given by the plaintiff in his cross examination cannot be said to be either perverse or contrary to law. The trial Court has acted within its discretion while refusing the prayer for amendment and have given valid reasons for the same. Hence, there is no case made out to interfere with the order. Petition is therefore dismissed with no order as to costs.

JUDGE

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