

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5237 OF 2013

1. Sambhaji Rambhau Ugale
Age: 63 years, Occu.: Agriculture,
2. Prabhu Rambhau Ugale,
Age: 59 years, Occu.: Agriculture,
3. Maharudra Rambhau Ugale,
Age: 55 years, Occu.: Agriculture,

All R/o Wasanwadi, Tq. & Dist. Beed.

..PETITIONERS

VERSUS

1. Shankar Eknath Khod
Age: 59 years, Occu.: Agriculture,
2. Babu Eknath Khod,
Age: 57 years, Occu.: Agriculture,
3. Bhanudas Baba Khod,
Age: 39 years, Occu.: Agriculture

All R/o Wasanwadi, Tq. & Dist. Beed.

..RESPONDENTS

....

Mr. G.K. Naik Thigle, Advocate for petitioners.
Smt. M.A. Kulkarni, Advocate for respondents.

....

**CORAM : RAVINDRA V. GHUGE, J.
DATED : 23rd FEBRUARY, 2016**

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners are aggrieved by the order dated 21.12.2012, by which the Trial Court has allowed the application Exhibit 87 thereby permitting the respondents to amend the plaint in R.C.S. No. 377/2007.

3. Mr. Thigle, learned Counsel for the petitioners has strenuously contended that the application seeking amendment, having been filed under Order 6 Rule 17 of the Civil Procedure Code, was squarely hit by the proviso to Rule 17. The issues in the matter were cast on 09.11.2008. The plaintiff witness no.1 was examined and his cross examination was concluded on 08.09.2011. In the meanwhile, the plaintiff-witness no.2 had filed an affidavit in lieu of examination in chief on 30.06.2011. As such, trial in the suit had commenced and hence the amendment to the plaint was not permissible.

4. He further submits that a map was also placed on record alongwith the plaint. By the proposed amendment vide application Exhibit 87, the boundaries and the size of Survey No.149/E was sought to be altered. Similarly, the area for which an injunction was being sought in the suit is now attempted to be increased from 11 acres to 16 acres. The suit is for injunction and not for recovery of possession. The respondents are claiming injunction on the basis of their ownership and title to the suit property. As such, the grant of amendment would lead to altering/changing the nature of the cause of action.

5. Mr. Thigale further submits that there are no pleading in the application as regards due diligence. There is no averment as to what were the circumstances which prevented the respondents from amending their plaint before the commencement of the trial. When the map, clearly indicating the boundaries and the sizes of the suit property, was before the plaintiffs, an application seeking amendment belatedly deserved to be rejected.

6. Mrs. Kulkarni, learned Counsel for respondents submits that the plaintiffs are agriculturists. They are not educated people. The plaint was drafted on their instructions. Due to lack of knowledge, they had faltered in stating the exact size of the suit property and giving further description of the properties.

7. As they proceeded with the evidence, they realised that there were errors in describing the suit property and hence they made an effort to seek amendment before it became too late. She therefore submits that considering these peculiar circumstances, the Trial Court had rightly allowed the application.

8. Mrs. Kulkarni further states that the petitioners amended their written statement on 16.06.2012 which was much after the commencement of recording of oral evidence. The Trial Court had permitted them to amend the written statement. As a result of the amendment, the respondents realised that there were certain deficiencies with regard to the description of the suit property and its size and hence an application was moved on 02.11.2012 after the petitioners amended their written statement. She further

submits that nominal costs have imposed upon the respondents and the impugned order can neither be termed as perverse nor erroneous.

9. I have considered the submissions of the learned Counsels as have been recorded hereinabove.

10. I do not find that the amendment as permitted by the Trial Court could result in altering or changing the nature of the cause of action. The size of the suit property has suffered an error owing to the description conveyed by the plaintiffs through their plaint. The map is on record. The map would indicate the correct sizes of the suit property. As such, merely because the respondents have been permitted to amend the plaint, would not mean that the contention of the plaintiffs would over bear the record of the suit property maintained by the Revenue Department.

11. In the light of the above, I do not find that the impugned order could be termed as being perverse or erroneous or that it was likely to cause grave injustice to the petitioners. Nevertheless, the

respondents deserve to be imposed with costs since I find that the costs awarded by the Trial Court are nominal.

12. As such, this petition is partly allowed. The respondents shall deposit costs of Rs.5,000/- before the Trial Court within four weeks from today. After depositing the costs, the petitioners would be at liberty to withdraw the said amount in equal proportions without any condition.

13. Considering the fact that the amendment has already been carried out by the respondents in their plaint, the petitioners would be at liberty to file an additional written statement. The Trial Court shall consider the all objections put forth by the petitioners in their additional written statement and would also consider the aspect of limitation, if any, while deciding the suit on its own merits.

14. Rule is made partly absolute as above.

(RAVINDRA V. GHUGE, J.)