

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3044 OF 2013

- 1 Bhaskarrao s/o Gopalrao Deshmukh,
Age : 69 years, Occ : Agri.,
R/o : Parbhani, Taluka And
District Parbhani.
 - 2 Smt. Sumanbai w/o Bhaskarrao Deshmukh,
Age : 64 years, Occ : Household,
R/o : Parbhani Taluka And
District Parbhani.
 - 3 Pratap s/o Bhaskarrao Deshmukh,
Age : 41 years, Occ : Agri.,
R/o : Parbhani, Taluka And
District Parbhani.
 - 4 Ramesh s/o Bhaskarrao Deshmukh,
Age : 36 years, Occ : Agri.,
R/o : Parbhani, Taluka And
District Parbhani.
- ..Petitioners

Versus

- 1 Subhash s/o Sakharam Deshmukh,
Age : 61 years, Occ : Agri,
R/o : Mali Galli, Parbhani,
Taluka & District Parbhani
- 2 Suresh s/o Sakharam Deshmukh,
Age : 56 years, Occ : Agri,
R/o : Nandkhed Road,
"Athwan Niwas", Parbhani,
Taluka & District Parbhani.
- 3 Girish @ Rajesh s/o Bhausaheb Deshmukh,
Age : 33 years, Occ : Agri,
R/o : Mali Galli (Gadhi), Parbhani,
Taluka & District Parbhani.

4 Vijay s/o Bhausaheb Deshmukh,
 Age : 29 years, Occ : Agri,
 R/o : Parbhani, Taluka and
 District Parbhani.

..Respondents

Mr.M.M.Patil (Beedkar), Advocate for the petitioners.
Mr.V.D.Salunke., Advocate for respondent Nos.1 to 4.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/05/2016

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 15/02/2013 by which the proposed amendment set out below application Exh.60 has been rejected.

2. Mr.Patil, learned Advocate for the petitioners has strenuously criticized the impugned order. Submission is that the application seeking amendment under Order 6 Rule 17 of the CPC was only to the extent of introducing paragraph No.7A which comprised of two parts. Firstly, that the story of exchange of the lands was further clarified considering the basic pleadings in the plaint. Secondly, Survey No.22, which happens to be a part of the story of exchange, was subsequently renumbered as 22/A/B. Thereafter, it was again

renumbered as 22/3. This was required to be brought on record.

3. Mr.Patil further submits that with the proposed amendment, neither the nature of the suit was altered, nor has any prejudice being caused to the respondents.

4. Mr.Salunke, learned Advocate appearing on behalf of respondent Nos. 1 to 4 submits that any clarification or submission of this nature cannot be a part of the pleadings. Though the story of exchange mentions survey No.22 in paragraph No.5 of the plaint, that happens to be a part of a feeble submission on the part of the plaintiffs. He, therefore, submits that the impugned order is neither erroneous nor illegal. He prays that this petition be dismissed with costs as the suit has been stayed on account of the petitioners.

5. I have considered the submissions of the learned Advocates.

6. In so far as the first part of the proposed amendment is concerned, the same is in the form of a clarification. The pleadings in the plaint deal with the said aspect of story of exchange. The Trial Court has, therefore, rightly concluded that there is no reason for permitting the said amendment as it is only for further clarification considering the basic pleadings in the plaint. I, therefore, do not find

any reason to interfere with the impugned order to the extent of the first part of the proposed amendment.

7. In so far as survey No.22 is concerned, it is said to have been renumbered subsequently as 22/A/B and thereafter as 22/3. It is only the mentioning of the present number of the said survey that can be introduced by the amendment and which would not alter the nature of the suit or cause any prejudice to the defendants.

8. The impugned order is, therefore, modified only to the extent of allowing application Exh.60 to the extent of permitting the petitioners/plaintiffs to write survey no.22/3 wherever survey no.22 appears in the plaint.

9. This petition is, therefore, partly allowed to the above extent and Rule is made partly absolute.

(RAVINDRA V. GHUGE, J.)