

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

904 WRIT PETITION NO. 5621 OF 2015

RAOSAHEB KARBHARI NAGE
VERSUS
UJJAWALABAI FAKIRRAO MORE AND OTHERS

Shri. N.K. Kakade, Advocate, for petitioner.

Shri. Gajendra D. Jain, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 19th AUGUST 2016

ORDER:

1) The petition is filed to challenge the order made by the trial Court, Civil Judge, Junior Division, Vaijapur, on Exhibit 73 in Regular Civil Suit No.301/2007. The application filed by the present respondent, plaintiff of the suit, under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint is allowed by the trial Court. Heard learned counsels of both the sides.

2) Initially suit was filed for relief of perpetual injunction in respect of some portion of agricultural land. In the past plaintiff had sold remaining portion of the land

to the defendants under sale deed and she had contended that in the suit property defendants had no right as the suit property was not sold but they were creating obstructions in the possession of the plaintiff. The defendants denied that the plaintiff has any portion left in land Gat No.147.

3) By the amendment application following prayer was sought to be added :-

“If the Court comes to the conclusion that plaintiff is not in possession then possession of the suit property, 36 gunthas, be given from defendant No.1 to the plaintiff.”

4) The trial Court has considered the aforesaid pleadings and it held that the nature of the suit will not change due to aforesaid amendment and for adjudication of the dispute and to avoid further litigation, the amendment needs to be allowed. Cost of Rs.2000/- is also imposed by the trial court for allowing the amendment.

5) The learned counsel for the petitioner placed reliance on the observations made by the Apex Court in

the case reported as (1) **2012 (4) Mh.L.J. 40 (SC) (J. Samuel vs. Gattu Mahesh)**; and, (2) **2010(1) Mh.L.J. 810 (Prakash vs. Bhika)** (Bombay High Court). In the first case the Apex Court has discussed the due diligence and it is laid down that plaintiff needs to show that even after due diligence he could not have made such mention in the plaint. There cannot be dispute over this proposition. In the second case this Court has considered the conditions which are required to be satisfied for allowing amendment and some observations made by the Apex Court in the case of **2009(4) Mh.L.J. (SC) 30 (Vidyabai vs. Padmalatha)** are used. The Apex Court has observed that ordinarily amendment should not be allowed after trial commences. In the present case trial had commenced and it appears that some admissions were given by the plaintiff that the defendant was in possession. After such admission, the amendment application was moved. In the case reported as **(2012) 11 SCC 341 (Abdul Rehman v. Mohd. Ruldu)** the Apex Court has discussed the circumstances when amendment can be allowed. The Apex Court has laid down that if there was something implicit in the pleadings and due to amendment party wants to give the particulars

and even wants to get additional relief, the amendment needs to be allowed if the nature of the case is not changed. In the present matter also it is the case of the plaintiff that the suit property belongs to her and the defendants have no concern with the suit property though they have purchased some portion of the same Gat number. It can be said that she has now realized that she cannot assert the case of possession and she needs to claim relief of possession.

6) If the plaintiff is able to prove that she is owner of the disputed portion, the Court will be required to decide her entitlement to get possession if the Court comes to the conclusion that plaintiff is not in possession. Though recording of evidence is started, in view of the peculiar circumstances and to avoid further litigation, this Court holds that the trial Court has rightly allowed the amendment and there is no reason to interfere in the order made by the trial Court. In the result, the petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

rs1