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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.7468/2010

Bali S/o Bhagwanta Suryawanshi,
Age : 74 years, Occ : Agriculture,
R/o Hondala, Tq. Mukhed,
District Nanded.

...Petitioner...

Versus

- 1 Angad S/o Datta Suryawanshi,
Age : 71 years, Occ.: Agril.,
- 2 Shivraj S/o Kashinath Sontakke,
Age : 51 years, Occ.: Agril.,
- 3 Padminbai W/o Gangadhar Sontakke,
Age : 46 Years, Occ.: Household,
- 4 Sumanbai W/o Shivaji Suryawanshi,
Age : 41 Years, Occ.: Household,

Respondents Nos.1 to 4
R/o Hondala, Tq. Mukhed,
Dist Nanded.

- 5 Piraji s/o Madhav Sonkamble,
Died through L.Rs.
- 5-1 Radhabai w/o Piraji Sonkamble
Age : 70 years, Occu. Household,
- 5-2 Nivrutti s/o Piraji Sonkamble
Age : 60 years, Occu. Agri.,

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5-3 Rama s/o Piraji Sonkamble
Age : 55 years, Occu. Agri.,

5-4 Babu s/o Piraji Sonkamble
Age : 50 years, Occu. Agri.,

5-5 Dadarao s/o Piraji Sonkamble
Age : 40 years, Occu. Agri.,

5-6 Apparao s/o Piraji Sonkamble
Age : 35 years, Occu. Agri.,

All R/o : Guntur, Tq. Kandhar,
Dist. Nanded.

6 Navnath S/o Narayan Vare,
Age : 46 years, Occ.: Agri.,
R/o Pakhandewadi, Tq. Mukhed,
District Nanded.

...Respondents...

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Shri H.I. Pathan, Advocate for petitioner.

Shri S.R. Kolhare, Advocate for respondent nos.2 to 4 and 6.

Smt S.G. Chincholkar, Advocate h/f Shri G.N. Chincholkar,
Advocate for respondent nos.5(1) to 5(6).

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 11.02.2016

ORAL JUDGMENT :

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

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2] The petitioner is aggrieved by the order dated 29.3.2010 passed by the appellate Court below Exhibit 13 in Regular Civil Appeal No.6/2006.

3] Contention of the petitioner is that Regular Civil Suit No.96/2003 was filed by the petitioner – plaintiff for seeking injunction against the respondent – defendants. The Suit property was described in the said suit. By judgment dated 21.12.2005, the suit came to be dismissed. The petitioner – plaintiff preferred Regular Civil Appeal No.6/2006.

4] The petitioner submits that by application (Exh.13) filed on 13.8.2009, the petitioner invoked Order VI Rule 17 of the Code of Civil Procedure seeking amendment to the plaint. Contention was that the old land Survey No.3/B admeasuring 1 H 71 R situated at village Hondala Tq.Mukhed underwent a change on account of the consolidation scheme. Land Survey No.3/B was converted into Survey No.3/2. The said survey number was then again converted into Gut No.42 admeasuring 0.37 R, Gut No.43 admeasuring 0.66 R and Gut No.40 admeasuring 0.68 R.

5] The petitioner submits that out of inadvertence,

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these Gut numbers were not properly mentioned in the plaint and the measurement of the lands was also mistakenly presented in the plaint.

6] The amendment that was sought was with regard to Gut No.40, which admeasures 0.68 R and Gut No.33 which admeasures 0.24 R. The application (Exh.13) prayed only for correcting the Gut No.40 admeasuring 0.68 R and for deleting the details with regard to Gut No.33.

7] Learned Advocate for the respondents has vehemently opposed this petition and has supported the impugned order, by which Exhibit 13 was rejected. Contention is that due diligence as is required to be demonstrated under the Proviso to Order VI Rule 17 has not been so demonstrated. The Proviso below Order VI Rule 17 has been introduced by the legislature with a specific purpose of avoiding amendment to a plaint belatedly or at any stage after the trial of the suit has commenced. The entire trial has been conducted on the basis of the contention that Gut No.40 admeasures 1 H 71 R. Now it is sought to be amended so as to indicate that it admeasures 0.68 R. This is likely to alter the nature of the litigation.

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8] It is further submitted that there is no pleading in application (Exh.13) as to what prevented the petitioner from seeking the amendment in the suit before the trial Court when the consolidation scheme is said to have been caused in 1995, which is practically about eight years prior to the institution of the suit.

9] It is further submitted that the petitioner – plaintiff has led entire evidence through several witnesses on the basis of the pleadings set out in the plaint. The suit has been dismissed on merits. The appeal is pending. At this belated stage, the petitioner ought not be allowed to amend the plaint.

10] I have considered the submissions of the learned Advocates as have been recorded hereinabove.

11] There is no dispute that the consolidation scheme has occurred some time in 1995. Gut numbers were altered on account of the consolidation scheme, which have further undergone change in the measurement of the lands that have been allotted different Survey numbers. There is no whisper in application (Exh.13) that these details of the sizes of the suit property were not within the knowledge of the petitioner.

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12] Even after the suit was dismissed, the petitioner could have made an attempt while the Regular Civil Appeal was instituted in 2006. It was in 2009 that an attempt to cause an amendment in the plaint is sought to be made and, therefore, struck by the Proviso to Order VI Rule 17 of the Code of Civil Procedure.

13] It is trite law that the Taluka Inspector of Land Records can be appointed even by the appellate Court. A TILR could be taken assistance of with reference to the measurement of the suit properties.

14] Since the appeal is still pending, I find it appropriate to permit the petitioner to address the appellate Court on the change in the Gut numbers. The appellate Court, in order to ensure that justice is done, would consider the same on its own merits in view of the fact that the appellate Court while delivering the impugned order has observed on internal page no.5 that the proposed amendment is not necessary to decide the matter finally and effectively. Considering these observations, the appellate Court may look into the aspect of the change in Gut numbers and the sizes of the suit land.

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15] As such, this petition is disposed of with the observations as above and without causing any interference in the impugned order. Rule is discharged. There shall be no order as to costs.

(RAVINDRA V. GHUGE, J.)