

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8174 OF 2016

Jagannath Ramrao Kadam and Ors. ... Petitioners
Vs.
Chandrasen Sheshrao Laad ... Respondent

Mr. V.V. Bhavthankar, Advocate for the petitioners.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 10-08-2016.

Per Court :

1. The petitioners are before this court purportedly aggrieved by an order dated 23-06-2016 upon an application exhibit-59 filed by present respondents in regular civil suit no. 4 of 2015 passed by Second Joint Civil Judge, Junior Division, Ambajogai.

2. The petitioners are defendants in regular civil suit no. 4 of 2015 instituted by present respondent seeking declaration of ownership and injunction against the present petitioners in respect of property particularly described in the plaint referring to boundary on the southern side to be Ambajogai-Bhavthana road. While in the sketch map has been annexed along with the plaint, it appears to be that, it is shown the road is separated by some distance from the land claimed by the plaintiffs. That sketch map is sought to be

amended by filing Exhibit-59 showing the land directly touching Ambajogai-Bhavthana road. Intention underlying the sketch map initially filed along with plaint does not appear to be that there is intervening land between the land and the road. An inadvertent error, unsuspecting it would be a matter argued over, has occurred while filing the sketch map. The said so called error/mistake is sought to be corrected in order to do away with arguments over the same by giving an amended sketch map showing the land concerned to be directly touching the Ambajogai-Bhavthana road. Such an amendment appears to be in tune with intention of plaintiff and the description of the property appearing in the plaint.

3. Although, learned counsel Mr. Bhavthankar vehemently contends that, this may take away valuable rights in respect of the land belonging to defendants intervening the claimed property by the plaintiff and the road shown in the earlier sketch map. As such, he submits that the amendment allowed is likely to affect rights of the defendants.

4. Learned judge while considering the case has given reasons as are appearing in paragraph no.4 which are re-produced hereinbelow for ready reference:

"4] *I have gone through the record, the plaintiff has submitted this suit for declaration of ownership alongwith declaration that he is in possession of the suit property. As per plaint prayer*

clause admeasuring area of the suit property is shown East – West 35 feet and South – North 40 feet. In the proposed amendment the said area is shown. Burden lies upon the plaintiff to prove his claim of ownership and possession of the suit property. By this amendment the admission of the plaintiff is not going to be withdrawn. It is not necessary at this stage to go into merit of the amendment. Therefore by this amendment nature of the suit will not be changed. Hence, in the result I pass the following order.”

ORDER

i] The plaintiff is permitted to carry out amendment as per this application on cost of Rs. 500/-

ii] Cost be paid to defendants.

5. Having regard to position as is emerging on facts, and that generally approach to amendments would be liberal, as far as, the amendment in present case is concerned, the order can seldom be faulted with. It is open for the petitioners to take up an amended defence in respect of the same, if they so desire. Writ petition accordingly stands rejected.

**(SUNIL P. DESHMUKH)
JUDGE**