

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

Writ Petition No.10046 of 2016

- * Zumbar s/o Parbhati Raikar,
Age 54 years,
Occupation : Agriculture,
R/o. Raikarwadi, Post Thergaon,
Taluka Karjat, District Ahmednagar,
Through its GPA
Ashok Zumbar Raikar
Age 32 years,
Occupation : Agriculture,
R/o. Raikarwadi, Post Thergaon,
Taluka Karjat,
District Ahmednagar. **.. Petitioner.**

Versus

- 1) Dilip s/o Bhanudas Raikar,
Age 42 years,
Occupation: Agri. & Service.
R/o. Raikarwadi, Post Thergaon,
Taluka Karjat,
District Ahmednagar.
- 2) Shankar s/o Bhanudas Raikar,
Age 52 years,
Occupation: Agriculture,
R/o. Raikarwadi, Post Thergaon,
Taluka Karjat,
District Ahmednagar.
- 3) Kundlik s/o Bhanudas Raikar,
Age 46 years,
Occupation: Agriculture,
R/o. Raikarwadi, Post Thergaon,
Taluka Karjat,
District Ahmednagar. **.. Respondents.**

Shri. N.C. Garud, Advocate, for petitioner.

Shri. Vinayak P. Narwade & Smt. Manushri V. Narwade,
Advocates, for respondent Nos.2 and 3.

CORAM: T.V. NALAWADE, J.

DATE : 30 SEPTEMBER 2016

JUDGMENT:

1) Rule. Rule made returnable forthwith. By consent, heard both sides for final disposal.

2) The present petition is filed to challenge the order made by the learned Civil Judge Junior Division Karjat on Exhibit 63 in Regular Civil Suit No.61/2012. The application for making amendment of the plaint is rejected by the trial Court. The suit is filed in respect of land Gat No.212/1 and the relief of injunction is claimed. It appears that at one place in the body of the plaint instead of describing the property as Gat No.212/1 the property is described as 212/2. The plaintiff has contended that it is a typing mistake and so correction needs to be made on page 2 of the plaint accordingly. Learned Judge of the trial Court has held that due diligence was not shown and so the application cannot be allowed.

3) Learned counsel for respondent, defendant submitted that even in the evidence filed on affidavit similar mistake is committed by the plaintiff. It is known that Advocates follow the practice of virtually reproducing everything from the plaint to make the affidavit which is filed as examination-in-chief. Due to this circumstance, there is possibility that similar mistake has appeared in the evidence filed on affidavit. In view of these circumstances, this Court holds that the trial Court ought to have allowed the application. The nature of the suit will not change due to amendment as relief was claimed in respect of Gat No.212/1 and not in respect of Gat No.212/2.

4) The petition is allowed. The order made by the trial Court is hereby set aside. The application at Exhibit 63 is allowed. Amendment is to be carried out accordingly within 15 days when the order reaches to the trial Court. Rule is made absolute in those terms.

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

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