

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.9761 OF 2013

Dinkar Pralhad Kote.

...Petitioner...

Versus

Vatsalabai w/o Pralhad Kote
and others.

...Respondents...

.....

Mrs.A.N. Ansari, Advocate for petitioner.

Respondent no.1 served.

Shri W.S. Jadhav, Advocate For respondent nos.2 to 5.

Shri V.S. Bedre, Advocate for respondent nos.6 to 8.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 16.02.2016

ORDER :

1] The petitioner is aggrieved by the order dated 18.11.2013 by which application (Exh.65) seeking leave to amend paragraph no.13 of the plaint under Order VI Rule 17 of the Code of Civil Procedure has been rejected. The petitioner is also aggrieved by the order dated 28.11.2013 passed by the trial Court by which application (Exh.68) has been rejected.

- 2 -

2] Mrs.A.N. Ansari, learned Advocate for the petitioner submits that the trial Court has passed an order below Exhibit 1 dated 6.9.2013. By the last paragraph of the said order, the petitioner – plaintiff was permitted to make the appropriate correction in paragraph no.13 of the plaint as envisaged in Order VII Rule 1 of the Code of Civil Procedure. She submits that that was in connection with the provisions of Section 8 of the Suits Valuation Act, 1887 and Rule 2 of the Maharashtra Suits Valuation (Determination of Value of Land for Jurisdictional Purposes) Rules, 1983.

3] She further submits that the value of the suit properties for the purpose of jurisdiction as concluded by the trial Court came to Rs.30500469/-. She submits that the plaintiff has deposited the valuation of the suit properties for the purposes of jurisdiction and what remained to be done was to correct paragraph no.13 of the plaint under Order VII Rule 1.

4] She further submits that an application (Exh.65) was moved in Marathi language seeking an amendment to paragraph no.13 of the plaint, which is in English language. By the impugned order dated 18.11.2013, the

- 3 -

trial Court came to a conclusion that the proposed amendment is not in tune with the order dated 6.9.2013 that was passed and hence the application for amendment cannot be entertained. Further application (Exh.68) seeking leave to amend the plaint was also rejected by order dated 28.11.2013. She, therefore, prays for leave to correct paragraph no.13 of the plaint as was permitted by the learned trial Court by order dated 6.9.2013.

5] Shri V.S. Bedre, learned Advocate appearing for the contesting respondent nos.6 to 8, who are original defendants, submits that the petitioner – plaintiff has erroneously moved an application for amendment at Exhibit 65. The plaintiff should have merely corrected paragraph no.13 of the plaint under Order VII Rule 1 as was permitted by the trial Court. Instead of doing so, the plaintiff moved an application (Exh.65), which has rightly been rejected. Further application at Exhibit 68 has also been rejected for the same reason. He, therefore, submits that there is no perversity in the orders dated 18.11.2013 and 28.11.2013 impugned in this petition.

6] Shri W.S. Jadhav, learned Advocate appearing on

- 4 -

behalf of respondent nos.2 to 5 supports the petitioner.

7] None appears for respondent no.1 despite service.

8] Considering the peculiar facts, as recorded above, it appears that the trial Court expected the petitioner – plaintiff to correct paragraph no.13 of the plaint in the light of the last paragraph of the order dated 6.9.2013. It would be apposite to reproduce the said paragraph hereinbelow :-

“In view of the provisions of Section 8 of the Suit Valuation Act, 1887 and Rule 2 of the Maharashtra Suits Valuation (Determination of Value of Land for Jurisdictional Purposes) Rules, 1983, the value of the suit properties for the purpose of jurisdiction comes to Rs.3,05,00,469/-. Accordingly, the plaintiff is directed to make correction in para No.13 of the plaint as envisaged under Rule 1 of the Order VII of CPC.”

9] This Court by its order dated 3.12.2013 has granted interim relief to the petitioner in terms of prayer clause (D) and as a consequence of which, Special Civil Suit No.70/2010 has been stayed.

10] As such, though the impugned orders do not call

- 5 -

for any interference, ends of justice would be met by permitting the petitioner to carry out the correction in paragraph no.13 of the plaint as has been permitted by the trial Court vide the reproduced paragraph above under its order dated 6.9.2013. There is no necessity for the petitioner to move an application for proposing any amendment.

11] In the light of the above, this petition is partly allowed only to the extent of permitting the petitioner to correct paragraph no.13 of the plaint as permitted by order dated 6.9.2013. Correction shall be carried out within a period of three weeks from today.

(RAVINDRA V. GHUGE, J.)