

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 8650 OF 2016

Shri Gopal Shantaram Shelatkar ... Petitioner
Vs
Shri Narayan Satyawar Shelatkar & ors. ... Respondents.

Mr. Prakash Hartalkar, for the Petitioner.
None for Respondents.

***CORAM : N.M. Jamdar, J.
Friday, 16 September 2016.***

P.C. :

The Petitioner-Defendant has challenged the order passed by the learned Civil Judge Junior Division Malwan dated 11 March 2016 whereby the amendment is sought for by Respondents-Plaintiffs to the plaint has been allowed.

2. The learned counsel for the Petitioner-Defendant submitted that at this stage, of the suit amendment ought not to be allowed. He submitted that by changing the person from whom the Respondents seek to derive title the nature of dispute is sought to be changed, which will prejudice the Petitioner.

3. The application was moved by the Respondents-Plaintiffs to modify the word 'Shivaji' to 'Shiva' as according to the Respondents-Plaintiffs Shivram to whom the Respondents-Plaintiffs seek to claim

was also referred to as Shiva. It was their case that Shivram has been referred to in certain documents as Shiva. The learned Civil Judge, Malwan found this correction to be of clerical nature and has granted the amendment.

4. As regards the contentions of the learned counsel for the Petitioner are concerned, in the reply filed to the application for amendment all that the Respondents-Plaintiffs have stated is that the name cannot be corrected at this stage and there is no explanation for the error. It is not placed on record by the Petitioner that there exists another person named Shivaji who is in any way connected with the dispute and that earlier the Respondents were claiming through this Shivaji and now they want to change it to Shiva. No such case is pleaded by the Petitioner. In any case merely by granting the amendment the arguments of the Petitioner are not foreclosed. What is the effect of carrying out the amendment and changing the name from Shivaji to Shiva can always be argued by the Petitioner at the time of trial. Keeping all contentions of the Petitioner open as above, the Writ Petition is rejected.

(N.M.Jamdar, J.)