

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

WRIT PETITION NO. 9366 OF 2016

Shrimant Chhatrapati Shivajiraje
Shahumaharaj Bhonsle,
R/at 47, Macchi Peth, Adalatwada,
Satara.

... Petitioner

v/s

1. Shrimant Chhatrapati Vijaysinharaje
Shahumaharaj Bhonsle,
R/at 47, Macchi Peth, Adalatwada,
Satara; & ors.

... Respondents

Mr.V.S.Kapse along with S.D.Chavan for the petitioner.

Mr.V.S.Talkute for Resp. Nos.1 to 4.

Coram: N.M. Jamdar, J.

Dated: 28 September 2016

P.C.:

Heard learned counsel for the parties.

2 Considering the nature of the dispute, taken up for final disposal by consent.

3 The Petitioner has filed a suit on 5 July 2011 seeking partition

of the suit property and share in respect of the suit property. An application for an amendment was moved by the Petitioner on 16 September 2015 seeking to carry out two amendments; first, specifying the boundaries of the suit property; and second, incorporating certain factual and legal averments. The application was opposed by the Respondents. The learned Civil Judge rejected the application by the impugned order dated 21 March 2016, holding that the amendment moved at this stage of the suit cannot be granted and the amendment is moved only for delaying the proceedings and it changes the nature of the suit.

4 As far as the proposed amendments of incorporation of paragraphs 6(a) and 6(b) are concerned, the learned counsel for the Petitioner submitted that these factual aspects are already on record and what is being sought to be advanced are, the effect of legal position as regard the factual aspect and, therefore, these paragraphs need not be incorporated by way of an amendment. The only amendment therefore remains is regarding the boundaries of the suit property. The suit properties have been mentioned in the plaint. That these suit properties exist is not in dispute. There also does not appear to be dispute regarding the correctness of the proposed boundaries. The contention of the learned counsel for the Respondents that this fault of not specifying the boundaries was earlier pointed out in the written statement and, therefore, the Petitioner should not be permitted to carry out this amendment. As

far the discussion on boundaries is concerned, the finding in the impugned order that it will change the nature of the suit does not survive, neither the amendment will delay the proceedings in the suit, as the amendment sought to be carried out will only aid the learned Civil Judge in passing the correct decree if the suit is so decreed. By specifying the boundaries of the properties, no prejudice is caused to the Respondents. Whatever is the implication of the amendment on the merits of the suit are concerned, the Respondents will have full opportunity to meet the case.

5 In the circumstances, the order passed by the learned Civil Judge will have to be quashed and set aside and the amendment as proposed regarding description of boundaries will have to be allowed.

6 The writ petition is accordingly disposed of.

7 The amendment will be carried out within a period of two weeks from today. The learned Civil Judge will consider taking up the suit for an early disposal subject to earlier time-bound commitments.

8 Both the parties will cooperate with the Civil Judge for an early disposal of the suit.

(N. M. Jamdar, J.)