

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6771 OF 2014

Anjali w/o Kundalik Samse,
Age-39 years, Occu-Agriculturist,
R/o Sonijawala, Tal.Kaij,
Dist. Beed.

– PETITIONER

VERSUS

1. Dattu s/o Naval Samse,
Age-29 years, Occu-Agriculturist,
2. Sushilabai w/o Naval Samse,
Age-44 years, Occu-Household,
3. Somnath s/o Narayan Samse,
Age-59 years, Occu-Agriculturist,
4. Anurath s/o Somnath Samse,
Age-29 years, Occu-Agriculturist,
5. Sambhu s/o Narayan Samse,
Age-46 years, Occu-Agriculturist,
6. Sunanda w/o Sambhu Samse,
Age-41 years, Occu-Agriculturist,
All R/o Sonijawala, Tq.Kaij,
Dist. Beed

– RESPONDENTS

Mr.B.R.Kedar, Advocate for the petitioner.
Mr.B.B.Bhise h/f Mr.D.J.Choudhary, Advocate for respondent Nos. 1
to 6.

CORAM : RAVINDRA V. GHUGE, J.)

DATE : 12/12/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. By an ad-interim order dated 08/08/2014, this Court has granted ad-interim relief to the petitioner in terms of prayer clause "C", which reads as under :-

“During pendency of the present writ petition, the proceeding in RCS No.101/2010, pending on the file of Ld. 3rd Joint C.J.J.D. Kaij, may kindly be stayed.”

3. I have considered the strenuous submissions of the learned Advocates for the respective sides.

4. The contentions of the petitioner are that she has purchased 2 portions of land in Survey No.38. The map correctly indicates the 2 portions and its boundaries which are mentioned on the internal page No.5 of the plaint, copy of which is placed on record. It is pointed out that boundaries of one piece of land admeasuring 1 acre and 22 gunthas has been correctly mentioned. The description and the size of the 2nd portion of land admeasuring 1 acre 10 gunthas is not mentioned, though the map is on record to indicate the correct

picture.

5. In order to ensure that inadvertent lack of pleadings should not affect the result of the suit, the petitioner/plaintiff preferred application Exh.51 seeking leave of the Court to carry out the amendment. By the impugned order dated 19/06/2014, the Trial Court has rejected Exh.51.

6. Learned Advocate for the respondents/defendants submits that the boundaries of the 2nd portion of the land are also not mentioned in the sale deed by which the plaintiff has purchased the said land. It is not disputed that the map forms an integral part of the plaint identifying the 2 portions of the land correctly. It is, however, contended that sale deeds are of 17/07/2007 and the suit has been filed in 2010. The amendment is sought on 03/12/2013 and hence considering the effect of Order 6 Rule 17 and the proviso introduced thereunder by the amendment of 2002 to the CPC, it would not permit the amendment at this stage.

7. I find from the respective pleadings and contentions of the parties that the plaintiff desires to mention the correct boundaries which are missing in so far as the 2nd portion of the suit land

admeasuring 1 acre 10 guntha is concerned. The map happens to be the integral part of the plaint. Even if the details of the boundaries are not mentioned in so far as land portion is concerned, the map on record would surely place the fact before the Trial Court.

8. What is sought by the plaintiff through Exh.51 is to correct the mistake so as to ensure that the pleadings are in tune with the map. The second request made in Exh.51 is with regard to a subsequent event that has occurred on 18/11/2013 by which 2 persons namely Vishnu Mahadev Ghadge and Pundlik Narayan, who are said to have purchased the land, have carried out a correction with the Sub Registrar, Kaij with regard to the said boundaries. This aspect is sought to be placed on record.

9. It is undisputed that neither is the plaintiff introducing a new cause of action, nor is the plaintiff introducing a new portion of land as the suit property. The issues have been cast in the matter, though recording of oral evidence has not commenced. I find that if the amendment, which is of a technical character, is permitted, the pleadings would be properly set out before the Trial Court and who would be better assisted, since the map correctly indicating the suit properties, is already on record. Nevertheless, since the plaintiff has

noticed the mistake after the issues have been cast, costs can be imposed on the plaintiff so as to compensate the respondents for the hardships suffered by them.

10. Considering the above, this petition is allowed. The impugned order dated 19/06/2014 is quashed and set aside and application Exh.51 stands allowed subject to the petitioner depositing costs of Rs.3,000/- before the Trial Court within a period of 6 weeks from today. The said costs would be withdrawn by the 6 respondents herein in equal proportions.

11. The petitioner shall carry out the amendment within 6 weeks from today. If the defendants desire to make further clarification, they would be at liberty to file an additional written statement with regard to the amended portion.

12. If the costs are not deposited within the time frame, this order shall stand recalled and application Exh.51 shall then stand rejected.

13. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)