

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8254 OF 2010

1. Ashok Tatyaba Ohol
Age 55 years,
Occ. Agriculture & Teacher

2. David Tatyaba Ohol
Age 53 years,
Occ. Agriculture,

3. Shamrao Tatyaba Ohol
Age 50 years,
Occ. Agriculture

All r/o Umbargaon,
Taluka Shrirampur,
District Ahmednagar.

..Petitioners

Versus

1. Baliram Govind Gaikwad,
Age 30 years, occ. Agri.,

2. Vilas Nana Ohol,
Deceased Through L.Rs.

A. Lata Vilas Ohol,
Age major, Occ. Household

B. Vishal Vilas Ohol,
Age major, Occ. Nil

C. Swapnil Vilas Ohol,
Age major, Occ. Nil

2A to 2 C : R/o Ohol Niwas,
Panchashil Nagar, Yerwada,
Pune.

3. Anil Nana Ohol,
Age 50 years,
Occ. Builder & Agri.,

4. Balasaheb Nana Ohol.
(Abated, as per order 22.3.2017)

5. Vijay Nana Ohol,
Age 46 years, Occ. Service

6. Sanjay Nana Ohol,
Age 43 years, Occ. Labour

7. Mayabai Nana Ohol,
Age 70 years, Occ. Agri. and
Household

All R/o Umbargaon,
Tq. Shrirampur,
District Ahmednagar.

..Respondents

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Advocate for Petitioners : Shri Karpe Rahul R.
Advocate for Respondent 1 : Shri Adhav D.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 06, 2017

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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioners are aggrieved by the rejection of their application Exhibit 82, filed in RCS No.175 of 2005, by order

dated 3.8.2010.

5. I have considered the strenuous submissions of the learned Advocates for the litigating sides.

6. There is no dispute that respondent No.1 / original plaintiff claims to be in possession of Gut No.1 admeasuring 1 Hectare and 44 Ares. Details of the suit property are mentioned in paragraph No.1 in the plaint. It is the grievance of the original plaintiff before the trial Court that the petitioners who are defendant Nos.1 to 3, are disturbing his peaceful possession and hence, he has sought permanent injunction. The basis of the claim of the original plaintiff is a sale deed dated 23.9.2004.

7. The petitioners have filed their written statement dated 10.11.2005, wherein Gut No.5 is mentioned below paragraph No.5 in the fifth line on the internal page No.2 and further in the Written Statement. After realizing the purported error of having mentioned Gut No.5 in the Written Statement instead of Gut No.1, an application Exhibit 82 was filed by the petitioners seeking an amendment to the Written Statement. Along with the prayer for correcting the Written Statement for mentioning Gut No.1, instead of Gut No.5, the petitioners have

also moved a request for raising the ground of adverse possession. As such, the prayer in Exhibit 82 was to introduce the claim of adverse possession with regard to Gut No.1.

8. The trial Court has rejected the said application on the ground that there is no need to correct the purported typographical error with regard to the Gut Number and that a new cause of action is sought to be introduced under the plea of adverse possession.

9. Having considered the submissions of the learned Advocates, I do not find that the trial Court has committed any error in declining leave to the petitioners to introduce the theory of adverse possession vide application Exhibit 82. The Written Statement having been filed consciously, does not contain any pleading which would have the trappings of adverse possession. This petition, therefore, is not being entertained to the extent of the request of the petitioners, to introduce the theory of adverse possession.

10. In so far as the typographical error in the written statement is concerned, there is no dispute that the suit filed by the original plaintiff is with regard to Gut No.1 and it is his

claim that the original defendants are disturbing his peaceful possession in Gut No.1. Apparently, when the suit is restricted to seeking perpetual injunction with regard to Gut No.1, it becomes obvious that the petitioners have erroneously typed Gut No.5 in place of Gut No.1 in the Written Statement. It is nobody's case that Gut No.5 is also at issue in RCS No.175 of 2005.

11. Considering the above, I do not find that the trial Court has rightly rejected leave to the defendant Nos.1 to 3 to correct Gut No.5 and mention Gut No.1.

12. In the light of the above, this petition is partly allowed. Application Exhibit 82 is allowed only to the extent of permitting the petitioners / original defendant Nos.1 to 3, to mention Gut No.1 in place of Gut No.5 in the Written Statement. The impugned order dated 3.8.2010 stands modified to this extent.

13. Rule is made partly absolute accordingly.

(RAVINDRA V. GHUGE, J.)

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