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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11721 OF 2016

Bhausahab s/o Ganpat Kasane
Age - Major, Occ - Agriculture
R/o Manjari, Taluka - Gangapur
District - Aurangabad

PETITIONER

VERSUS

1. Gorakh s/o Ganpat Kasane
Age - Major, Occ - Agriculture
R/o Manjari, Taluka - Gangapur
District - Aurangabad
 2. Kailas s/o Gorakhnath Kasane
Age - Major, Occ - Agriculture
R/o Manjari, Taluka - Gangapur
District - Aurangabad
 3. Vilas s/o Gorakhnath Kasane
Age - Major, Occ - Agriculture
R/o Manjari, Taluka - Gangapur
District - Aurangabad
 4. Bhimabai w/o Gorakh Kasane
Age - 55 years, Occ - Household
R/o Manjari, Taluka - Gangapur
District - Aurangabad
 5. Nirmala w/o Rajendra Bahirat
Age - Major, Occ - Agriculture
R/o Ghogargaon, Taluka - Newasa
District - Ahmednagar
 6. Shamabai w/o Uttamrao Deshmukh
(Since deceased through her LR)
- Sanjay Uttamrao Deshmukh
Age - 40 years, Occ - Agriculture
R/o Yeola, District - Nashik

RESPONDENTS

7. Sumanbai w/o Raosaheb Kokane
Age - 62 years, Occ - Household
R/o Taklibhan, Taluka - Shrirampur
District - Ahmednagar
8. Heerabai w/o Chaburao Kotme
Age - 60 years, Occ - Household
R/o Kotamgaon, Taluka - Yeola
District - Nashik
9. Damuanna s/o Ganpat Kasane
Age - Major, Occ - Agriculture
R/o Manjari, Taluka - Gangapur
District - Aurangabad

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Mr. Anil S. Bajaj, Advocate for the petitioner
Mr. K. B. Jadhav h/f Mr. S. B. Bhapkar, Advocate for R-2 to 5
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 8th AUGUST, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the appearing parties finally by consent.
2. Writ petition is moved against an order rejecting amendment application Exhibit-116 filed in Regular Civil Suit No. 102 of 2002 dated 15th June, 2016. Petitioner, who is plaintiff in the suit, refers to that while his claim in the suit is confined to area of erstwhile survey No. 155/02 admeasuring 16 Acres, 25 *Guntha*, now comprising land gut No. 120/02 with some other

land, admeasuring 37 Acres, 25 *Guntha*. While petitioner is coming from *mufossil* area and is primarily an agriculturist, did not realize that such a description may not bring to the fore his precise grievance, while during the pendency of suit, it was realized, he had applied for amendment describing property more particularly by giving boundaries.

3. Learned advocate for the petitioner submits that the application has been rejected solely with reference to proviso of amended provisions of Order VI, Rule 17 of the Civil Procedure Code, whereunder a party is required to show due diligence. Learned advocate for the petitioner submits that it is largely due to illiteracy prevailing in *mufossil* area, implications of non reference to particulars had not been realized earlier.

4. On the other hand, learned advocate Mr. K. B. Jadhav holding for Mr. Bhapkar, appearing for respondents, submits that the application has been made after commencement of trial and the proviso requires that in the absence of due diligence, such amendment may not be possible. He submits that suit has been instituted in 2002 while application for amendment has been moved in 2016. He submits that going by provisions of law, no fault can be found with the order passed by trial court. Learned

advocate further refers to that trial court has rightly considered that right to seek amendment has been limited under the amended provisions. He, therefore, urges that no indulgence be given to the petitioner.

5. Though learned advocate for the respondents has argued as aforesaid, learned advocate for the petitioner has referred to a decision of the Supreme Court in the case of "*Usha Devi V/s Rijwan Ahmad and Others*" reported in *AIR 2008 SC 1147*. Head note (A) of said citation reads as under:

“ (A) Civil P.C. (5 of 2908), O.6 R.17 – Amendment of plaint – Correction of description of suit property – Plaintiff not diligent – Did not seek amendment at early stage though wrong description was pointedly brought up by defendants not only in written statement but also in course of proceedings – Proposed amendment necessary for brining to fore real controversy between parties – Supreme Court allowed prayer for amendment in view of decision in 2005 (13) SCC 89 – Proposed amendment allowed subject to cost of Rs.10,000/- as defendants made to suffer injunction for a long time with regard to their own property because of said wrong description. ”

6. Looking at that in the present matter respondents do not dispute claim of the petitioner in the suit is with reference to erstwhile survey No. 155/02 admeasuring 16 Acre, 25 *Guntha* comprised in and being a part of present gut No. 120/02 admeasuring 37 Acre, 25 *Guntha* and also looking at the other

surrounding circumstances, viz., land being situated in *mufossil* area and petitioner as well appears to be agriculturist, looking at the larger interest, as had been considered by the Supreme Court in aforesaid judgment, situation can be allowed to be mended by imposing costs on the petitioner.

7. In view of aforesaid, writ petition stands allowed. Impugned judgment and order dated 15th June, 2016 on Exhibit-116 in Regular Civil Suit No. 102 of 2002 passed by Joint Civil Judge, Senior Division, Gangapur stands set aside. Application Exhibit-116 stands allowed, subject to payment of costs of Rs.15,000/- to be paid to present respondents. Deposit of costs within a period of six weeks from today is a condition precedent for deeming the application Exhibit-116 being allowed. Costs accordingly be deposited within aforesaid period in trial court for its onward equitable disbursal to present respondents. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]