

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10005 OF 2015

NARSING BABURAO DHOTARE

VERSUS

SHAIKH IQBAL SHAIKH USMANODDIN AND OTHERS

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Advocate for Petitioner : Shri Suryawanshi Kamlakar J..

Advocate for Respondent 4 and 5 : Shri S.S.Dargad.

Advocate for Respondent 6 : Shri Sharad S. Shinde h/f Shri
V.V.Bhavthankar.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th August, 2017

Per Court:

1 The Petitioner is aggrieved by the order dated 18.06.2015 by which the application Exhibit-73 filed by the Petitioner/ Plaintiff seeking amendment under Order VI Rule 17 of the Code of Civil Procedure, has been rejected.

2 I have considered the submissions of the learned Advocate for the Petitioner and the learned Advocates appearing on behalf of Respondent Nos.4, 5 and 6. Respondent Nos.1 to 3, though served, have not chosen to enter an appearance in this proceedings.

3 Respondent Nos.4 to 6 strenuously submit that this petition be dismissed considering the fact that an earlier application Exhibit-68 for

an identical cause was not pressed by the Petitioner/ Plaintiff.

4 I find that in Exhibit-68, the Petitioner/ Plaintiff had first sought an amendment by way of correction as House No.1-156 (old) was typed as 1-56, new House no.1-160 was typed as 1-60 and old House number for another house 1-126 was typed as 1-26. In paragraph 3 of Exhibit-68, the figure "18" mentioned in paragraph 3 of the plaint was to be corrected as "19". In paragraph 4 of Exhibit-68, the date of "18.07.2011" was to be corrected as "19.07.2011".

5 For the reasons best known to the Petitioner/ Plaintiff, paragraphs 3 and 4 of Exhibit-68 were not pressed. The Trial Court, however, disposed of Exhibit-68 as having been not pressed in its entirety. This was the foundation for passing the impugned order thereby, rejecting application Exhibit-73 by concluding that an earlier application has already been not pressed.

6 I have seen the remark of the Plaintiff on Exhibit-68, wherein, he contends that paragraphs 3 and 4 of Exhibit-68 are not pressed. It appears that the learned Advocate for the Plaintiff has himself written the said remark and inadvertently has also mentioned that the prayer to the extent of paragraphs 3 and 4 of Exhibit-68 has also not been pressed. The situation has become further complicated by the order of the Trial Court by which Exhibit-68 was "seen and filed" presuming that the whole application is not pressed. Once I find that the said observation of the Trial

Court was incorrect, the impugned order needs to be set aside.

7 Notwithstanding the above, it is the contention of the Plaintiff that the actual suit property numbers are 1-126, 1-156 and 1-160. The digit "1" has been deleted by way of typographical error in each figure in the plaint. On this count, Exhibit-73 deserves to be allowed.

8 Insofar as the date mentioned in paragraph 3 of the plaint "18.07.2011" is concerned, the sale deed placed on record before the Trial Court indicates that the date is "19.07.2011" and not "18.07.2011". Such typographical error can be corrected as the document itself is on record and if this correction is not carried out, the Plaintiff would suffer grave prejudice in his suit.

9 While granting the above prayers, the hardships suffered by the Defendants have to be considered. Respondent Nos.4 and 5/ original Defendants are before this Court. Respondent No.6 is the Municipal Council. Considering the above, the costs in order to reduce the hardship of Respondent Nos.4 and 5, could be granted.

10 In the light of the above, this Writ Petition is partly allowed. The impugned order dated 18.06.2015 is set aside and Exhibit-73 is allowed to the extent of the contents of paragraph 2 of Exhibit-73. Amendment shall be carried out within FOUR WEEKS from today.

11 However, the Petitioner shall deposit costs of Rs.3000/- (Rupees Three Thousand) before the Trial Court within FOUR WEEKS

from today and Respondent Nos.4 and 5 (Dinesh Dhotare and Ganpat Dhotare) shall withdraw Rs.1500/- (Rupees Fifteen Hundred) each from the Trial Court, without conditions.

kps

(RAVINDRA V. GHUGE, J.)