

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

WRIT PETITION NO.130 OF 2016

Babarao s/o Ramrao Deshmukh,
Age 42 years, Occu. Service,
R/o Takli (Kumbhakarn),
Taluka and District Parbhani ... PETITIONER

VERSUS

- 1) Vithal s/o Kondiba Raut,
Age 46 years, Occu. Agriculture,
R/o Takli (Kumbhakarn),
Taluka and District Parbhani
- 2) Shivaji s/o Kondiba Raut,
Age 44 years, Occu. Agriculture
R/o Takli (Kumbhakarn),
Taluka and District Parbhani ... RESPONDENTS

.....
Shri P.S. Paranjape, Advocate for petitioner
Shri S.S. Kulkarni, Advocate for respondents
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CORAM: S. B. SHUKRE, J.

DATED: 27th February, 2017.

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith and
heard finally by consent of learned counsel for the parties.

2. On going through the amendment application, I find that the amendment has been sought by the respondents on vague grounds. The suit filed by the respondents against the petitioner is based upon a registered sale deed and it is in respect of Gat No.502. It is the contention of the respondents that, during pendency of the suit, the respondents got knowledge about execution of some exchange deed by the petitioners in favour of some purchasers, wherein, the correct Gat number of the land has been mentioned and it is Gat No.501. Now, on the basis of this exchange deed, the respondents want to say that, actually, the land owned and possessed by the petitioner is Gat No.502 and not Gat No.501, and it would also mean that the land owned and possessed by the respondents is actually Gat No.501 and not Gat No.502. Curiously enough, the application does not show that any correction deed has also been executed in respect of the sale deed which is the basis of the suit filed by the respondents, being Suit No.179/2008, against the petitioner. Then there is also a decree dated 30/8/2010 passed in Regular Civil Suit No.254/2008 filed by the petitioner against the respondents, wherein the respondents have been perpetually enjoined from interfering with the possession of the petitioners over Gut No.501 to the extent of their share. This decree has

attained finality and had confirmed the ownership and possession of the petitioners over Gat No.501. Against this decree, one fails to understand as to how the respondents, who are the plaintiffs in the Suit No.179/2008, could seek to draw advantage from some admissions given by the petitioner in some transaction with the persons who are not parties to the suit. In this background, the proposed amendment could not be said necessary to determine the real controversy and has also the potential to change the nature of suit. In the amendment application also, no particular period of time regarding knowledge about the execution of the exchange deed by the petitioner with other purchasers has been mentioned. No reasons for the delay are given. Admittedly, this amendment application was moved after commencement of the trial and it was moved at the stage when the evidence was recorded. Due diligence test thus has not been answered by the respondents.

3. All the above referred material aspects of the case, it appears, have not been considered by the learned Jt. Civil Judge, Senior Division, Parbhani when he passed the impugned order on 8/10/2015 allowing the amendment application. If this order is allowed to stand, which is not in consonance with the provisions of Order VI Rule 17 of the Code of Civil Procedure, it would also

result in changing the nature of the suit. Such an application ought not to have been allowed by the learned Civil Judge.

4. In the result, the Writ Petition is allowed. The impugned order is quashed and set aside. The amendment application stands rejected. Rule is made absolute in the above terms. No costs.

(S. B. SHUKRE)
JUDGE

fmp/wp130.16