

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

WRIT PETITION NO. 12147 OF 2015

Kailas Padmakar Deshmukh (Patil) .. Petitioner
Age. 42 years, Occ. Service,
R/o. Jalgaon, at present
1 Ten Broke Court, Bride Water,
New Jersey, U.S.A. 08807, America.

Through General Power of Attorney
Prakash Sopan Patil
Age. 40 years, Occ. Business,
R/o. B 6/93, Elight Empire,
Balewadi, Pune - 45.

Versus

1. Smt. Pallavi Vilas Patil .. Respondents
Age. 37 years, Occ. Household,
2. Gaurav Vilas Patil
Age. 21 years, Occ. Education
3. Ku. Tejasvi Vilas Patil (Minor)
Age. 15 years, Occ. Education,
4. Tanuj Vilas Patil (Minor)
Age. 11 years, Occ. Education,

Res. No.3 & 4 as Minor through
Res. No.1 Their Natural Guardian Mother
Smt.Pallavi Vilas Patil
Res.no.1 to 4 all
R/o. Survey No.145/04, Plot No.12,
"Sadoba Nagar", Behind Supreme Tyers,
Old Bhusawal Road, Jalgaon,
Taluka & Dist. Jalgaon.

5. Sau. Nalini Padmakar Patil
Age. 54 years, Occ. Household,
R/o. Datala, Taluka Malkapur,
Dist. Buldhana.

Mr.S.H. Tripathi, Advocate for the petitioner.

Mr.N.B. Suryawanshi, Advocate for respondent Nos.1 to 4.

Mr.S.S. Dixit, Advocate for respondent No.5.

CORAM : S.B. SHUKRE, J.

DATED : 01.03.2017

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by consent.

2. Reliance has been placed on the case of Sajjan Kumar Vs. Ram Kishan, (2005) 13 SCC 89 by the learned Counsel for the petitioner to support the contention that the Trial Court ought to have allowed the amendment application as it is necessary for determination of the real controversy involved in the suit. Mr.N.B. Suryawanshi, learned Counsel for respondent Nos.1 to 4 placed reliance on the judgment on the case of J. Samuel & Ors. Vs. Gattu Mahesh & Ors. (2012)2 SCC 300 in support of his contention that unless "due diligence" criteria is satisfied, the amendment application cannot be allowed and therefore no fault can be found with the impugned order.

3. Learned Counsel for respondent No.5 adopted arguments of learned Counsel for respondent Nos.1 to 4.

4. By the amendment application, two types of amendments have been sought. One relates to mentioning of the four boundaries of two properties and other relates to certain pleadings which are sought to be made by way of clarification or amplification of pleadings already made in the plaint. So far as first type of amendment is concerned, I am of the view that the observations of the Hon'ble Apex Court in the case of Sajjan Kumar (Supra) could be fruitfully applied to the facts of this case. It can well be seen in the case of Sajjan Kumar (Supra), the proposed amendment sought correction of description of the suit properties and therefore Hon'ble Apex Court observed that allowing of such amendment was necessary to avoid possible failure of justice and needless litigation, by exercising the jurisdiction vested in the Civil Court by law. In the present case also, the description of the suit properties is insufficient and therefore by the proposed amendment, it has been sought to be completed. If the proposed amendment in this regard is not allowed, there would be needless complications and also possible failure of the justice. Therefore, in exercise of supervisory jurisdiction of this Court, it would be necessary to

correct the error committed by the Civil Court by allowing the amendment only to this extent.

5. It is true that in the case of J. Samuel (Supra) the Hon'ble Apex Court has laid down that the requirement of "due diligence" is unavoidable and the party seeking to amend the pleadings must satisfy this criteria. However, the law laid down by the Hon'ble Court in the case of Sajjan Kumar (Supra) is on the premise that there is a jurisdiction vested in the Civil Court inspite of limitation of the proviso to Order 6 Rule 17 of C.P.C., to allow the amendment, in some situations. These situations are of possible failure of justice and multiplicity of litigation. So the Hon'ble Apex Court held that in order to avoid possible failure of justice arising from incorrect or insufficient description of the suit property, such jurisdiction could be exercised in favour of the party seeking amendment of pleadings. In the instant case also the amendment seeks to provide the boundaries of suit properties and therefore, I find that the instant case would be governed by the law laid down by the Apex Court in the case of Sajjan Kumar (Supra).

6. As regards, second type of amendment, I do not think that it can be allowed as no reason whatsoever has been provided in the application by the petitioners for

the delay which occurred in seeking such amendment. In the case of Narayan Madhavrao Pole Vs. Sumanbai w/o. Uttamrao Napte, 2012(1) Mh.L.J.316, learned Single Judge of this Court allowed the amendment application after commencement of the trial by applying the ratio of Sajjan Kumar (Supra), because it was thought by the learned Single Judge that the proposed amendment was only in the nature of amplification of the pleadings already made in the complaint. The case of Sajjan Kumar (Supra), indicates that the criteria of possible failure of justice is writ large in those cases where the boundaries of the suit properties are incorrectly mentioned and where failure to clarify or amplify the pleadings in that regard may result in possible failure of justice. This ratio has been followed in the case of Narayan (Supra) by the learned Single Judge of this Court, in the facts and circumstances peculiar to that case. But facts of this case being different, the ratio of J.Samuel (Supra) would be applicable. Therefore, second type of amendment cannot be allowed.

7. In the result, this writ petition deserves to be partly allowed and it is allowed accordingly.

8. The first type of amendment as proposed in paragraph 2 of the amendment application (Exh.37) is

allowed and it be carried out within four weeks from the date of the order. The second type of proposed amendment mentioned in paragraph 3 of the amendment application is rejected. The impugned order stands quashed and set aside accordingly, subject to payment of costs of Rs.2000/- to be deposited in the Trial Court before the amendment allowed in terms of this order is carried out. Rule made partly absolute in the above terms.

[S.B. SHUKRE,J.]