

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2279 OF 2014

Prabhakar Ananta Gajare	...	Petitioner
Vs.		
Govind Yashwant Nagtilak	...	Respondent

Mr.Ajay A. Joshi, for the petitioner
Mr.Prasad B.Kulkarni,for the respondent No.1.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 11th October, 2017.

P.C.

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioner herein impugns the order dated 1.11.2013 passed by the Joint Civil Judge, Junior Division, Pandharpur in RCS No.429 of 2004. The petitioner herein happens to be the original plaintiff. The suit was filed seeking the relief of perpetual injunction that the defendants shall be restrained from passing through his land. Issues were framed on 3.10.2011. Initially, issues that were framed were :-

- (1) Whether the plaintiff is in settled possession of the suit property on the date of the suit?
- (2) Whether the defendants are obstructing the plaintiff from their

peaceful possession.?

(3) Whether the plaintiff is entitled to the relief sought ?

3. On 6.8.2013, the learned Civil Judge, Junior Division, Pandharpur had observed that the issues were wrongly framed and therefore the issues were recast as follows :-

“1) Whether the plaintiff acquires right to pass by the suit way passing over defendants land Gat No. 520, 521, 522 to his land Gat No.517, 518, 519 and 520 by prescription ?

2) Whether the plaintiff has right over the suit way passing over defendants land Gat No.520, 521, 522 by the easement of necessity for ingress and egress of his land Gat No.517, 518, 519 and 520 ?

3) Is any cause of action arose to file the present suit ?

4) Whether the plaintiff is entitled to relief sought ? if yes, what ?”

4. The said issues were framed on 6.8.2013. On 21.8.2013, the plaintiff filed an application seeking amendment to the pleadings on the ground that issues were re-cast and that the easementary rights of the plaintiff was to be decided. According to the amended pleadings, he had also prayed for amending the prayer clauses in the original suit. The defendant had objected to the amendment of the said pleadings.

5. The learned Civil Judge had observed that in fact on the basis of the rival pleadings, the Court had moved/recast the issues.

6. It is pertinent to note that the learned Judge has also observed that it is settled principle that on the basis of the pleadings, the parties would adduce evidence and not on the basis of the issues. According to the learned Judge, the contrary issues are framed on the basis of rival pleadings. The learned Judge was of the opinion that once trial has commenced, that is at that stage the case was posted for cross-examination of the defendant, it would not be proper to permit the plaintiff to amend the pleading. It was also observed that the issues were recast as per the provisions in the Order XIV Rule of C.P.C. According to the learned Judge, the plaintiff had failed to show that despite due diligence, he could not incorporate the said pleadings in the original suit.

7. Order XIV Rule 5 reads as under :-

“R.5 Power to amend, and strike out, issues – (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matter in controversy between the parties shall be so made or framed.”

8. It is true that the plaintiff ought to have shown that several issues were recast in the absence of pleadings of both the parties because the plaintiff had not raised any issue of easementary rights. All that he had prayed was for perpetual injunction against the defendant from obstructing him from using the way from the side of agricultural land.

9. The learned counsel for the petitioner submits that soon after the issues were recast, the plaintiff had realized that it would not be appropriate to adduce oral evidence in the absence of pleadings and, therefore, had sought amendment.

10. The learned counsel for the respondent submits that in the eventuality that amendment to the pleadings is granted time and again it would be an unending process. According to the learned counsel for the respondent, nothing would preclude the petitioner from adducing their oral evidence to that effect and therefore, he supports the impugned order.

11. The learned counsel for the petitioner submits that adducing oral evidence in the absence of pleadings would not be within the framework of law and the same may not be admissible in evidence and

therefore he is entitled to amend the pleadings.

12. The issue No.2 would decide the issues in question as the learned Court has rightly framed an issue as to whether prior to seeking injunction from disturbing from passing of the way, the plaintiff would have to show that he has a right over the suit way passing over the defendant's land Gat No.520, 521, 522 by the easement of necessity for ingress and egress of his land. It is in these circumstances that to substantiate and establish his right of easement, the amendment to the pleadings would be necessary in the interest of justice. Since the suit is of the year 2004, it would be appropriate to request the learned Judge to expedite the trial. It goes without saying that the defendant would have a right to file an additional written statement to answer the amended pleadings.

ORDER

- (i) The Petition is allowed.
- (ii) The order dated 1.11.2013 is hereby quashed and set aside.
- (iii) The learned Civil Judge, Junior Division, Pandharpur shall take the amended pleadings on record and accept the amended written statement of the defendant in the event that it is filed within 30 days from filing of the amended plaint. The learned Judge is further requested to

expedite the trial and conclude the same on or before 30.5.2018.

13. Rule is made absolute in the above terms.

[SMT. SADHANA S.JADHAV, J.]