

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2216 OF 2015

Tanaji S. Shinde .. Petitioner.
v/s.
Yashwant S. Shinde & Others .. Respondents.

Mr. Ravi Kadam, for the Petitioner.

Mr. Dhananjay Rananaware, for Respondent Nos. 1,2 and 4.

CORAM: M.S.SANKLECHA, J.

DATE : 7th AUGUST, 2017.

P.C:-

This Petition under Article 227 of the Constitution of India, challenges the order dated 11th November, 2014 passed by the District Judge, Satara. By the impugned order dated 11th November, 2014, the Appellate Court rejected the Petitioner's application for amendment of the plaint to incorporate City Survey Numbers of the properties situated at Ullahasnagar, mentioned in paragraphs 1C and 1D of the plaint.

2 In 2001, the Petitioner filed a suit for partition being Special C. S. No.100/ 2001. The Petitioner herein had filed an application for amendment regarding above properties, seeking to incorporate the City Survey Numbers in the plaint. However, the same was rejected by the Trial Court on 21st June, 2006. The Petitioner accepted the same and went to trial on the basis of the properties as mentioned in paragraphs 1C and 1D, without incorporation of the City Survey Numbers. Thereafter, suit was partly decreed on 3rd December, 2012 except the property mentioned in paragraphs 1C and 1D of the plaint.

3 On 5th January, 2013, Petitioner filed an appeal before the District Judge, Satara to the extent its plaint was dismissed. Thereafter, on 20th September, 2014, the Petitioner filed an application, seeking to amend the plaint by adding survey numbers to properties at paragraphs 1C and 1D of the plaint. The only reason made out by the Petitioner for filing amendment another application was that, there was a change in the Advocate which has led to the filing of an application before the Appellate Court, seeking to amend the plaint. However, same was rejected on the ground that an earlier application for identical amendment was rejected in 2006 and accepted by Petitioner. Therefore, he could not now urge the same issue.

4 Mr. Kadam, learned Counsel appearing for the Petitioner invites my attention to the order of the Trial Court which while dealing with the issue of the description of the suit property records as under:-

“ It is equally correct that the factum of existence of suit-properties shown as 1B, 1C and 1D, with some difference, has not been disputed by the defendants. But, still, the description of said properties in the plaint does not fulfill the requirement of Order-7, Rule-3 of Civil Procedure Code. Therefore, I find that, the Plaintiff failed to give the proper description of the suit-properties 1B, 1C and 1D. Thus, I answer issue No.1 in the negative.”

On the above basis, it is submitted that the identity of the property is not disputed even by the Defendants. It is only the absence of the survey number being indicated in the pleadings, which lead to the Trial Court to hold that the property, has not been property described by the plaint.

5 On the other hand, Mr. Rananaware, learned Counsel

appearing for the Respondent Nos.1,2 and 4 points out that the entire exercise of seeking to amend the plaint in the appellate proceedings is only to delay the result of the appeal. This is evident from the fact that even though the appeal was filed as far back in January, 2013, the application for amendment was made only in September, 2014 before the Appellate Court. Further, a mere change of an Advocate is no reason to justify an amendment application identical to one which had stands rejected as far back in 2006. It is further submitted that by virtue of allowing the present amendment, the Respondents would put to a great prejudice as the Petitioner would then seek a re-trial on the issue on the ground that the properties are now appropriately described. Therefore, in the above view, the impugned order calls for no interference.

6 In response, Mr. Ravi Kadam, learned Counsel for the Petitioner very fairly, on instructions, states that the Petitioner would not seek a re-trial of the proceedings only on the ground of property being properly described.

7 The proviso to Order 6 Rule 17 of the Code of Civil Procedure which prohibits amendments to the pleadings (in the absence of due diligence on the part of the Plaintiff) after commencement of Trial Court would not apply to suits instituted prior to 1st July, 2002 as held in ***Vijay Agarwal v/s. Harinarayan G. Bajaj 2013 (4) Mh. L. J. 298***. Thus, above proviso to Order VI Rule 17 of the CPC will have no application to the present facts as the suit is of the year 2001.

8 No doubt, the Petitioner should have been more vigilant of his rights and identical amendment being disallowed as far back as in

2006, should have challenged. However, in the peculiar facts of the case, the identity of the property is known to both the Petitioner as well as the Respondents. It is not the case of the Respondents that the property as described in the plaint, was not sufficient for them to identify the property. In fact, the Trial Court itself records that the suit property have not been disputed by the Respondents herein. In fact, it is only a case of not giving details of the survey numbers of the properties. There is no difficulty on both sides in identifying the properties. The amendment allowed only clarifies the suit properties by giving its details.

9 Therefore, keeping in view the undertaking on behalf of the Petitioner, that even if the amendments are allowed, it would not seek re-trial, the amendment could be allowed.

10 In the circumstances, it would be appropriate in the facts and the circumstances of the case in exercise of my power under Article 227 of the Constitution to set aside the impugned order dated 11th November, 2014, rejecting the Petitioner's application for amendment of the pleadings.

11 In the above view, the impugned order dated 11th November, 2014 call for interference under Article 227 of the Constitution.

12 **Writ Petition is disposed of** in the above terms. No order as to costs.

(M.S.SANKLECHA,J.)