

Sarnobat

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6796 OF 2017

Smt. Khadija Abdul Wahid Sayyed & Ors. .. Petitioners
Vs.
Abdul Rashid Gafoor Sayyed. .. Respondent

Mr. Chintaman Shah, Advocate for the Petitioners.
Mr. Omar Khaiyam Shaikh, Advocate for the Respondent.

CORAM : M. S. SANKLECHA, J.
DATE : 16th AUGUST, 2017.

P. C. :

1. Moved for urgent relief.
2. This petition challenges the order dated 4th March, 2017 passed by the Joint Civil Judge, Jr. Division, Bhiwandi. By this impugned order the respondent's application for amendment of plaint under Order 6 Rule 17 of the Code of Civil Procedure was partially allowed.
3. The petitioners' grievance to the impugned order is that, the amendment which allowed the addition of the word 'not' in the 2nd sentence of paragraph 16 of the plaint causes prejudice to the petitioners. This for the reason that an admission on the part of the plaintiffs (respondent herein) to the benefit of the petitioners is being taken away by the proposed amendment. .
3. It is an admitted position before me that the amendment to the

plaint was moved before commencement of the trial. The paragraph 16 of the plaint as filed, from the second sentence thereof reads as under :-

“.....The plaintiff submits that however, by deleting the name of the plaintiff, the defendants have become the owners of the suit land only on the basis of the mutation entry. Under these circumstances, the plaintiff is absolute owner and in possession of the suit land and the suit house and the defendants have absolutely no right, title and interest in the suit land and the suit house.”

4. The amendment allowed is the addition of the word “not” between the words “the defendants have” and “become the owners of the suit land”. This addition of the word “not” submits the petitioner takes away an admission. This is clear case of typographical error/oversight i.e. omitting to type the word “not” in the second sentence of paragraph 16 of the plaint. This is evident from the 3rd sentence of paragraph 16 as filed, which clearly asserts that the plaintiff i.e. respondent herein is the absolute owner and in possession of the suit land and the defendant has no right, title and interest in the suit property. In view of above, the amendment would not amount to withdrawal of an admission.

5. Therefore, in the aforesaid facts, allowing the amendment in the present facts by the impugned order in the 2nd sentence in paragraph 16 as filed by the petitioners is a possible view. Thus no occasion arises to exercise my supervisory jurisdiction under Article 227 of the Constitution of India.

6. Accordingly, petition is dismissed. No order as to costs.

[M. S. SANKLECHA, J.]