

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

WRIT PETITION NO. 6742 OF 2015

Shri Dilawar Ghudulal Digraje
and Ors

..Petitioners.

Vs

Hajrat Karim Shaikh

.. Respondent

Mr. Umesh R. Mankapure with Mr. Vinod Sanghavikar, Advocate
for Petitioners.

Mr. P.D. Pise, Advocate for Respondent.

**CORAM : R.G.KETKAR,J.
DATE : 19/01/2017**

PC:

1. Not on Board. At the request of Mr. Mankapure, taken up for admission. Heard Mr. Umesh Mankapure, learned counsel for the petitioners and Mr.P.D. Pise, learned counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as defendants, have challenged the Judgment and order dated 23.3.2015 passed by the learned 2nd jt. Civil Judge, Jr. Dn., Miraj below Exhibit-67 in Regular Civil Suit No. 171 of 2009. By that order, the learned trial Judge allowed the application made by the plaintiff under Order VI, Rule 17 of C.P.C. for amending the plaint.

3. In support of this petition, Mr. Mankapure submitted that initially the plaintiff has instituted suit on 17.8.2009 only for declaration that he has half share in City Survey No.8465-B of

Immamhim Mirajou Digraje. Application for amendment is moved on 18.12.2014 after filing of affidavit in examination in chief by plaintiff's witness. He, therefore, submitted that as trial has commenced, the learned trial Judge ought to have recorded finding as to whether the plaintiff has satisfied the condition laid down in proviso to Order VI, Rule 17 of C.P.C. Secondly, he submitted that there is delay in filing the application for amendment. By the proposed amendment, the plaintiff has sought injunction and, therefore, it changes the nature of the suit.

4. On the other hand, Mr. Pise supported the impugned order. He submitted that the City Survey decision was rendered on 28.6.2013 and thereafter the defendants started causing obstruction to the plaintiff's possession and, therefore, he is required to amend the plaint so as to pray for injunction. He further submitted that other amendment proposed by the plaintiff is to add the bracketed portion after sub-division of City Survey No.8465 in paragraph 1. That fact is already set out in paragraph 3 of the plaint. He, therefore, submitted that no case is made out for interfering with the impugned order.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. The plaintiff has filed application proposing amendment in respect of description of the suit

property. In paragraph 1 of the plaint, the plaintiff has already described the suit property as City Survey No. 8465-B. In paragraph 3, the plaintiff has averred that City Survey No. 8465 was divided in 8465-A and 8465-B. Name of Mirasaheb is recorded in respect of Survey No. 8465-B and name of Faridsaheb is recorded in respect of City Survey No. 8465-A. The plaintiff is claiming share in the property of Mirasaheb.

6. For the reasons set out in paragraph 3 of the plaint as also for the reasons recorded in paragraph 6 of the impugned order, I do not find that the learned trial Judge has committed any error in allowing that amendment.

7. As far as amendment in respect of introduction of prayer for injunction is concerned, perusal of the reply filed by the defendants shows that they did not dispute passing of order by City Survey on 28.6.2013. The plaintiff is alleging that after this decision, the defendants have started obstructing his possession. In view of the development that took place pending the suit, the plaintiff is required to amend the plaint.

8. For the reasons recorded in paragraph 6 of the impugned order, I do not find any case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the

decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)